

To: The Ministry of Agriculture of the Republic of Lithuania According to 18-07-2006  
Agreement No. 8-396 Concerning Rendering of Services

# **Feasibility Study on the Administration of the EU Ignalina Programme**

FINAL REPORT



*EUROPOS SOCIALINIAI, TEISINIAI IR EKONOMINIAI PROJEKTAI*

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## **Abbreviations**

NPP	Nuclear Power Plant
CPMA	Central Project Management Agency
EDIS	Extended Decentralised Implementation System
EBRD	European Bank for Reconstruction and Development
EU	European Union
PI	Programmed instrument
PMU	Project Management Unit
VAT	Value added tax
IIDSF	Ignalina International Decommissioning Support Fund
SNPSI	State Nuclear Power Safety Inspectorate
SE	State Enterprise
MS	Member State

*Translated from Lithuanian*

### **1. Relevance, Object, Aim and Objectives of the Study**

In Lithuania's negotiations over membership in the European Union (hereinafter referred to as the "EU"), one of the most complicated negotiating objects was the issue of the closure of the Ignalina Nuclear Power Plant (hereinafter referred to as the "Ignalina NPP"). The most important outcome of the negotiations was that Lithuania assumed the obligation to close down the first unit of the Ignalina NPP by 2005 and the final date for the decommissioning of the second unit will be 31 December 2009. In turn, the EU undertook to cover a major portion of costs related to the closure of the Ignalina NPP and its consequences. A special protocol on the closure of the Ignalina NPP<sup>1</sup>, which records the specific commitments of the EU for the period 2004-2006 (allocation commitments for 285 million euro), the EU's lasting obligation to support the decommissioning of the Ignalina NPP (it is embodied that the *Ignalina Programme*<sup>2</sup> will be continuously carried out and extended beyond 2006), and the directions of this support, was annexed to the EU Accession Treaty.

**One of the most important preconditions for the successful implementation of Lithuania's international commitments concerning the closure of the Ignalina NPP is the effective organisation of the management of the Ignalina NPP decommissioning process and efficient use of financial instruments.** The management of this process is rather complicated because a great number of financial instruments (with different procedures) are used in the implementation of the Ignalina NPP Decommissioning Programme.<sup>3</sup> The Programme is financed directly out of the EU support funds for the Ignalina Programme: through the Ignalina International Decommissioning Support Fund (hereinafter referred to as the "IIDSF") and the *Programmed Instrument for Ignalina*; out of special target grants allocated from the Lithuanian State Enterprise Ignalina Decommissioning Fund and the state budget of the Republic of Lithuania for relevant ministries and other state institutions responsible for the implementation of this Programme, approved general allocations and other sources.<sup>4</sup> During the period 2007-2013, this management task becomes even more complicated as the scope of functions of the Ministry of Economy responsible for the management of the Ignalina NPP decommissioning process are expanded:

- first, in 2005, the EU handed over the administration of part of its funds intended for the closure of the Ignalina NPP, namely of the so-called *Programmed Instrument for Ignalina*. When drafting the financial package for the programming period 2007-2013, the European Commission prepared a draft proposal for a Council Regulation on the *Ignalina Programme* (COM (2004) 624 final)<sup>5</sup>, under which Lithuania can anticipate receiving EU financial support of up to 837 million euro<sup>6</sup> (applicable prices) for the implementation of the Ignalina NPP decommissioning measures during the period 2007-2013. The availability of all the funds under the Ignalina Programme for Lithuania is subject to adequate progress on the implementation of the Ignalina NPP

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<sup>1</sup> Treaty establishing the European Community and the Act concerning the Conditions of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, and Protocol No. 4 on the Ignalina Nuclear Power Plant in Lithuania (OJ L 236, 23 9 2003, p. 944.)

<sup>2</sup> EU financial support to the decommissioning of the Ignalina NPP is called the *Ignalina Programme*.

<sup>3</sup> Approved by the Government of the Republic of Lithuania, Resolution No. 117 "On Approval of the Decommissioning Programme for Unit No. 1 and Unit No. 2 of the State Enterprise Ignalina Nuclear Power Plant" (Official Gazette *Valstybės Žinios*, 2005 02 05, No. 17-536).

Ibid, Article 13.

<sup>5</sup> Proposal for a Council Regulation on the implementation of Protocol No 4 on the Ignalina Nuclear Power Plant in Lithuania, as annexed to the Act concerning the conditions of accession to the European Union of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia "Ignalina Programme" / COM/2004/0624 final /

<sup>6</sup> 743 million euro, 2004 prices.

Decommissioning Programme as the programming and allocation of the resources are based on actual payment needs and absorption capacity;<sup>7</sup>

- second, the activities of the IIDSF as the external financial instrument of the European Commission are foreseen until 2010 and later the entire management of the EU financial support for the closure of the Ignalina NPP **may be transferred** to Lithuanian institutions.

Taking due account of the aforesaid, there is an increasing need to promote the application of more efficient management principles and procedures to the implementation of Ignalina NPP decommissioning programme and administration of separate projects, and to strengthen the programme management and monitoring capacities of the institutions administering the Ignalina Programme.

**The aim of this study** was to carry out an analysis of legal acts passed by the EU Council of Ministers and the European Commission, international treaties, secondary documents and the legal acts of the Republic of Lithuania related to EU support for the decommissioning of the Ignalina NPP and to draft proposals regarding the administration of the *Ignalina Programme* during the period 2007-2013 and further activities of the IIDSF in Lithuania.

Taking due account of the aim of this study, **the object of the analysis** was the legal and administrative organisation of the management of the EU financial support for the decommissioning of the Ignalina NPP – *the Ignalina Programme*, i.e. the administration system, principles and priorities of the Programme. The study was aimed at assessing the administration system and principles of the Ignalina Programme as applicable during the programming period 2004-2006 and planned for the period 2007-2013. In the study, the main focus was placed on administration of the Ignalina Programme through the IIDSF, as during the period of the preparation of the study the project of technical assistance to the Ministry of Economy in the management of the decommissioning of the Ignalina Nuclear Power Plant analysed in parallel and provided recommendations to the Ministry of Economy on administration of the Ignalina Programme through national institutions during the period 2007-2013.

Seeking to fully assess the strengths and weaknesses as well as the initial administration lessons of the current administration system of the EU Ignalina Programme, to identify disadvantages arising as a result of legal regulation, and to propose recommendations regarding improvement of the administration system during 2007-2013, the following **objectives of the analysis** were formulated:<sup>8</sup>

1. To analyse the legal acts regulating the Ignalina Programme and related EU legal acts<sup>9</sup> and international treaties<sup>10</sup> (including draft Regulations<sup>11</sup> for the 2007-2013 financial perspective period).

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<sup>7</sup> COM(2004) 624 final.- quot. – Article 3.

<sup>8</sup> The objectives of the analysis were revised during the meeting with the representatives of the Nuclear Energy and Radioactive Waste Management Department of the Ministry of Economy held on 29 August 2006.

<sup>9</sup> Council Regulation (EEC) No 3906/89 of 18 December 1989 on Economic Aid to Certain Countries of Central and Eastern Europe (OJ L 375, 23 12 1989, p. 11);

Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation Applicable to the General Budget of the European Communities (OJ L 248, 16 9 2002, p. 1);

Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation Applicable to the General Budget of the European Communities (OJ L 357, 31 12 2002, p.1);

2. To assess the compliance of the legal acts of the Republic of Lithuania related to the EU financial support for the decommissioning of the Ignalina Power Plant<sup>12</sup> with the aforementioned EU legal acts and to present respective proposals regarding improvement of the Ignalina Programme administration system and principles during 2007-2013 (together with recommendations regarding the improvement of related legal acts).

The analysis comprised the following two fundamental components of the Ignalina Programme administration process:

- *the analysis of the institutional model of the Programme administration* (international and national institutions involved in the administration, functions and responsibility assigned to them under treaties and related legal acts as well as administration costs and capacities). The analysis was mainly focussed on the following two problematic issues:<sup>13</sup>
  - (1) whether the administration system applied during the period 2004-2006 creates conditions for effective programming, implementation and monitoring of the projects related to the closure of the Ignalina NPP and ensures the optimal management of the Programme? If not, what are the main weaknesses and disadvantages of the administration system?

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European Commission Decisions on the Allocation of Funds to the IIDSF:

- a) Decision No. (2004) 4180 of 22 October 2004;
- b) Decision No. (2005) 3383 of 8 September 2005.

European Commission Decisions on the Allocation of Funds to the Special Account of the Treasury of the Lithuanian State:

- Decision No. K(2004) 5454 of 27 December 2004;  
Decision No. K(2005) 5676 of 23 December 2005.

<sup>10</sup> Treaty establishing the European Community and the Act concerning the Conditions of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuanian, Hungary, Malta, Poland, Slovenia and Slovakia, and Protocol No. 4 on the Ignalina Nuclear Power Plant in Lithuania (OJ L 236, 23 9 2003, p. 944.)

Framework Agreement between the Republic of Lithuania and the European Bank for Reconstruction and Development Relating to the Activities of the Ignalina International Decommissioning Support Fund in Lithuania ratified by Law No. IX-468 of 12 July 2001 (Official Gazette *Valstybės Žinios*, 2001 No. 75-2631).

<sup>11</sup> Proposal for a Council Regulation on the implementation of Protocol No 4 on the Ignalina Nuclear Power Plant in Lithuania, as annexed to the Act concerning the conditions of accession to the European Union of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia "Ignalina Programme" / COM/2004/0624 final /.

<sup>12</sup> The Decommissioning Programme for the Unit 1 and the Unit 2 of the State Enterprise Ignalina Nuclear Power Plant approved by Resolution of the Government of the Republic of Lithuania (Official Gazette *Valstybės Žinios*, 2005, No. 17-536); Regulations of the Lithuanian State Enterprise Ignalina Decommissioning Fund approved by Resolution No. 536 of 17 April 2002 the Government of the Republic of Lithuania (Official Gazette *Valstybės Žinios*, 2002, No. 42-1565); Law of the Republic of Lithuania on Additional Employment and Social Guarantees for the Employees of the State Enterprise Ignalina Nuclear Power Plant (Official Gazette *Valstybės Žinios*, 2003 No. 48-2106); Resolution No. 980 of 7 September 2005 of the Government of the Republic of Lithuania on the Administration of the Ignalina Programme in Lithuania; other standard acts of the Government of the Republic of Lithuania and other institutions governing the Ignalina NPP decommissioning activity.

<sup>13</sup> Problematic issues were identified during the introductory meetings with the representatives of the Nuclear Energy and Radioactive Waster Management Department of the Ministry of Economy.

- (2) whether responsible Lithuanian institutions have sufficient authorisations and instruments to ensure timely and effective use of the Ignalina Programme funds (especially through the IIDSF) for the designated purpose? If not, what system changes are necessary / recommended, and what instruments or measures must be developed?
- *the analysis of the Programme administration principles and procedures.* Currently, different project selection, funding, monitoring and management rules are applied to technological projects financed through the IIDSF and administered by the European Bank for Reconstruction and Development (hereinafter referred to as the “EBRD”) and other projects – they are mainly related to the elimination of negative consequences of the closure of the Ignalina NPP and support in the field of regulation – administered by Lithuanian national institutions (PHARE procedures are applicable to the latter during the period 2004-2006). Taking due account of the specifics of the Ignalina NPP closure projects<sup>14</sup>, the challenges raised by the duality of the administration principles were assessed by presenting as examples specific cases when and what administration principles and procedures applied did not serve the purpose. In the light of the conducted analysis, recommendations regarding the improvement of these principles during the period 2007-2013 were presented.

The final draft report was co-ordinated with the Contracting Authority – the Ministry of Economy of the Republic of Lithuania.

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<sup>14</sup> Ignalina NPP decommissioning projects are long-term, complex, and inter-related, their programming and implementation take time, and in addition, it is difficult to precisely predict the process of implementation of these projects due to technological reasons.

## 2. Legal Regulation of the Ignalina Programme and Implications for Programme Administration during the Period 2004–2006

The main document regulating the EU support to the Ignalina NPP decommissioning – the Ignalina Programme – is the Act concerning the Conditions of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and Protocol No. 4 on the Ignalina Nuclear Power Plant in Lithuania<sup>15</sup> (hereinafter referred to as the “Protocol No. 4 to the Act of Accession”). Article 2 of the Protocol reads that “*During the period 2004–2006, the Union shall provide Lithuania with additional financial assistance in support of its efforts to decommission, and to address the consequences of the closure and decommissioning of, the Ignalina nuclear power plant (hereinafter “the Ignalina Programme”). Measures under the Ignalina Programme shall be decided and implemented in accordance with the provisions laid down in Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to certain countries of Central and Eastern Europe*<sup>16</sup> as last amended by Regulation (EC) No. 2500/2001.”<sup>17</sup> Regulation No. 3906/89 is considered to be the legal basis for PHARE support to certain countries of Central and Eastern Europe, therefore, this Article stipulates the provision of EU financial assistance for the decommissioning of the Ignalina NPP according to the PHARE procedures. Furthermore, paragraph 7 of Article 2 of the Ignalina Protocol provides that “*the assistance under the Ignalina Programme, or parts thereof, may be made available as a Union contribution to the Ignalina International Decommissioning Support Fund, managed by the European Bank for Reconstruction and Development.*”

These provisions of Article 2 of Protocol No. 4 to the Act of Accession embodied the duality of the Ignalina Programme administration system during the period 2004-2006 (see Scheme 1). The major part (around 85%) of the EU financial commitments under this Protocol is allocated through Union contributions to the IIDSF managed by the EBRD. In compliance with IIDSF Rules<sup>18</sup> and the Framework Agreement between the Republic of Lithuania and the EBRD relating to the Activities of the IIDSF in Lithuania<sup>19</sup> (hereinafter referred to as the “Framework Agreement”), this financial instrument may be used to fund **technological** and technical assistance **projects** for the decommissioning of the Ignalina NPP and related reorganisation of the Lithuanian power sector.

During Lithuania’s negotiations over EU membership, it was admitted that the extent of consequences of the decommissioning of the Ignalina NPP is related not only to technical decommissioning works and supply safety investments necessary to change the capacities of the Ignalina NPP, but also with the support measures related to the safety of the power plant intended for the Ignalina NPP personnel as well as to the economic regeneration of the Ignalina

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<sup>15</sup> OJ L 236, 23 9 2003, p. 944.

<sup>16</sup> OJ L 375, 23 12 1989, p. 11.

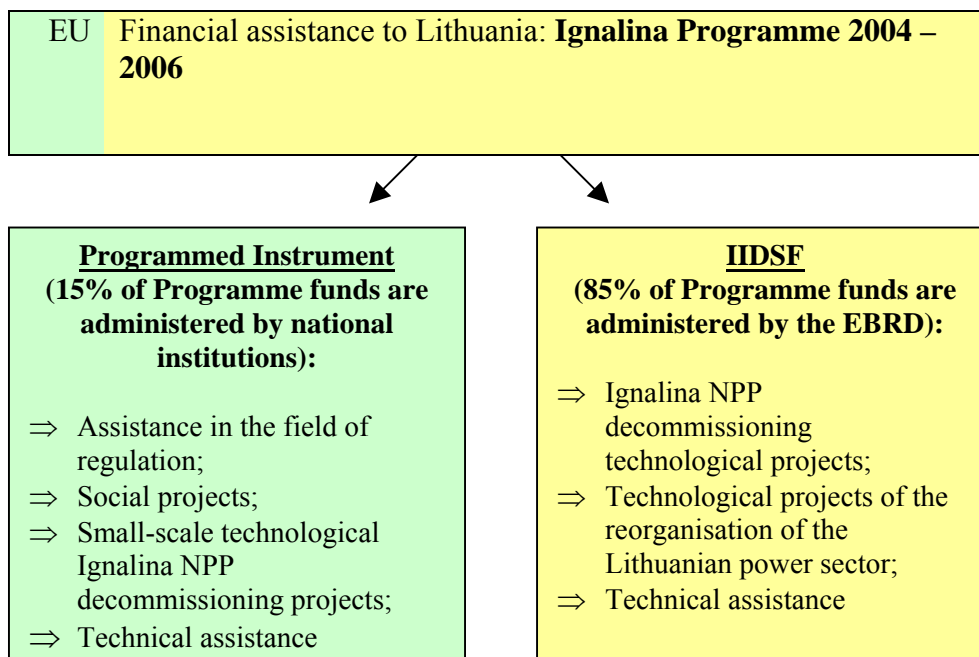
<sup>17</sup> OJ L 342, 27 12 2001, p. 1.

<sup>18</sup> Approved by the EBRD Board of Directors on 7 March 2001.

<sup>19</sup> Framework Agreement between the Republic of Lithuania and the European Bank for Reconstruction and Development Relating to the Activities of the Ignalina International Decommissioning Support Fund in Lithuania of 5 April 2001 (Official Gazette *Valstybės Žinios*, 2001 No. 75-2631).

NPP region.<sup>20</sup> Respectively, paragraph 4 of Article 2 of Protocol No. 4 to the Act of Accession provides that “*The Ignalina Programme shall include measures to support plant personnel in maintaining a high level of operational safety at the Ignalina Nuclear Power Plant in the periods prior to the closure and during the decommissioning of the said reactor units*” These measures of nuclear safety culture (**social projects**) are financed through the Programmed Instrument for Ignalina administered by Lithuania national institutions as the IIDSF does not provide funding for projects of this kind. Funds for the implementation of projects are allocated through the Programmed Instrument for Ignalina, and the administration and the control over the use of these funds are carried out in compliance with PHARE procedures, as stated in the aforementioned paragraph 2 of Article 2 of the Ignalina Protocol.

**Scheme 1. Financial Instruments under the Ignalina Programme 2004 – 2006:**



The operating principles and procedures of these two financial instruments for management of the Ignalina Programme and the difficulties related to the implementation of the Programme arising out of legal (non-)regulation are discussed in more detail below.

### **2.1. Administration of the Programme through the IIDSF**

#### Legal Basis:

The IIDSF was established as a financial instrument for the management of international assistance for the decommissioning of the Ignalina NPP at the beginning of official negotiations over Lithuania’s membership in the EU. At that time, the main legal acts and regulations governing the activities of the Fund were passed:

<sup>20</sup> Maniokas, K., Stanionis, R. Negotiations on Decommissioning Ignalina Nuclear Power Plant // Maniokas, K., Vilpišauskas, R., Žeruolis, D. (ed.), Lithuania’s Road to the European Union, Vilnius, Eugrimas, 2005. - p. 263-308.

1. Agreement between the European Commission and the EBRD for the establishment of the IIDSF signed on 30 March 2000;
2. Resolution of 12 June 2000 of the EBRD Board of Directors on the Establishment of the IIDSF;
3. Rules of the IIDSF approved by the EBRD Board of Directors on 7 March 2001;
4. Framework Agreement between the Republic of Lithuania and the European Bank for Reconstruction and Development Relating to the Activities of the Ignalina International Decommissioning Support Fund in Lithuania of 5 April 2001 ratified by Law No. IX-468 of 12 July 2001 of the Seimas of the Republic of Lithuania (Official Gazette *Valstybės Žinios*, 2001 No. 75-2631);
5. Resolution No. 757 “On the Implementation of the Framework Agreement between the Republic of Lithuania and the European Bank for Reconstruction and Development Relating to the Activities of the Ignalina International Decommissioning Support Fund in Lithuania” of 28 May 2002 of the Government of the Republic of Lithuania (Official Gazette *Valstybės Žinios*, No. 54-2128).

The provisions of the Agreement Establishing the European Bank for Reconstruction and Development of 29 May 1990 are applicable to the IIDSF as well. The Fund was established under Article 18 of the Agreement Establishing the EBRD, which enables the Bank to manage special funds in compliance with the rules of these funds and the provisions of the Agreement Establishing the EBRD.

#### Purpose:

The purpose of the IIDSF is to accept and make use of funds provided by Contributors for financing or co-financing of:

1. the decommissioning work at the Ignalina NPP;
2. measures which are consequential to the decision taken by the Republic of Lithuania to close and decommission the Ignalina NPP and which would assist the necessary restructuring, upgrading and modernisation of the energy production, transmission and distribution sectors as well as improve energy efficiency (Article 1.02 of the IIDSF Rules).

In compliance with the approved rules of the Fund, **IIDSF funding may be allocated only to technological projects**, and therefore, taking due account of a wider range of Ignalina NPP decommissioning projects, a unified funding system for the projects supported under the Ignalina Programme is not ensured. For this purpose, the Programmed Instrument for Ignalina, the administration of which is analysed in Section 2.2 of the Report, was developed separately.

#### Duration:

The IIDSF Rules provide that the Fund will remain in force for a period of 10 years. Also, they state that prior to the end of this period countries-contributors should consult with the Manager (EBRD) about the advisability of extending the operations of the Fund for an additional period, if the objectives of the Fund (Article 6.01 of the IIDSF Rules) have not been fully completed yet. Taking into consideration the fact that the implementation of some

complicated Ignalina NPP decommissioning measures funded through the IIDSF takes time (for more details see the *Overview of the Projects* presented in this Section of the Report), it is hardly likely that all the projects approved for funding through the IIDSF during the 2004-2006 perspective will be completed by 2010. Taking due account of this fact, the extension of the Fund's activities is little questioned. However, the gradual takeover of programming and implementation of new projects as well as the handover of a major part of management of EU assistance for the decommissioning of the Ignalina NPP to Lithuanian institutions is to be considered. This aspect is discussed in Section 3.3. of the Report.

#### Governance and Supervision:

The main governing body of the IIDSF is the Assembly of Contributors, which is responsible for the approval of the Fund's strategic orientations and activities/measures to be financed as well for the supervision of its activities (Article 4.01 of the IIDSF Rules). It is comprised of representatives of the countries-contributors. Having paid the minimum contribution of at least 1.5 million euro to the Fund (paragraph c) of Part B of the IIDSF Rules), the country acquires the right to participate in the Assembly of Contributors when decisions are taken regarding funding of the Ignalina NPP decommissioning projects. Currently, there are 16 countries which have paid their contributions to the IIDSF.<sup>21</sup> Meanwhile, Lithuania, as a recipient country may attend the meetings of the Assembly of Contributors as an observer (paragraph h) of Article 4.01 of the IIDSF Rules). In addition, the Rules specify that the recipient country has to give its consent to each project being funded (paragraph c) Article 3.01 of the IIDSF Rules).

The Operating Committee assists the Assembly of Contributors in performing its functions. The tasks of the Operating Committee are mainly related to the selection of projects and the assessment of the progress of the Fund's activities. The Operating Committee is comprised of not more than five representatives of contributors, and the recipient country is invited to participate in its activities only as an observer as well (Article 4.02 of the IIDSF Rules).

The administration of the Fund is delegated to the Manager, which is the EBRD. The Bank, as the Manager of the Fund, provides technical, project management, financial, legal and other administration services. For the administration of the Fund, the EBRD receives a fixed fee of 2% of the total amount of contributions to the Fund, as specified in paragraph d of Article 4.04 of the IIDSF Rules. On average, these administration costs amount to 2 million euro per year.<sup>22</sup> The EBRD acts on behalf of the Fund's Contributors only as the administrator of these funds, and this activity of the Bank is not related to its activity as a financial institution in supporting investment projects complying with the principles of reliable banking. The EBRD shall be responsible for the use of the Fund's resources to the Assembly of Contributors (paragraph 5 of Article 4.03 of the IIDSF Rules). However, the decisions of the European Commission to allocate yearly contributions to the IIDSF indicate that *"if the agreed obligations are not fulfilled due to reasons which are within the control of the Government of Lithuania, the Commission may reconsider the [Ignalina] programme so that at its own*

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<sup>21</sup> Austria EUR 1,500 million, Belgium EUR 1,636 million, Denmark EUR 2,686 million, EU EUR 389,500 million, Finland EUR 1,500 million, France EUR 1,500 million, Germany EUR 6,500 million, Ireland EUR 0,667 million, Luxembourg EUR 1,500 million, the Netherlands EUR 1,500 million, Norway EUR 1,500 million, Poland EUR 1,500 million, Spain EUR 1,500 million, Sweden EUR 5,895 million, Switzerland EUR 1,909 million, and United Kingdom EUR 1,500 million.

<sup>22</sup> Data of the Ministry of Economy.

*discretion it would revoke the whole or part of it and/or would reallocate unused funds for other purposes.”*<sup>23</sup> Furthermore, in the event that it has been established that funds are used not for their designated purpose or in violation of the Rules, Lithuania, and not the EBRD, would have to repay the funds to the EU budget.

At the project level, under Section 5 of the Framework Agreement, a Joint Committee comprised of competent senior representatives of the responsible Lithuanian institutions (the Ministry of Economy of the Republic of Lithuania, the Recipients, the State Nuclear Power Safety Inspectorate (hereinafter referred to as “VATESI”)) and the Bank must be established. Its purpose is to exchange information on and discuss the implementation of the Framework Agreement, and in particular progress achieved in the implementation of projects, obstacles and problems encountered in the implementation of project components, and other matters relevant to the project level. **The Joint Committee has not been established yet.** Moreover, no other legal mechanism has been set for the provision of EBRD information on the course of the implementation of the projects, payments carried out and progress achieved to the responsible institutions of the Republic of Lithuania. In practice, the main Recipient – the Ignalina NPP Decommissioning Service – submits quarterly project implementation reports and monthly financial reports of projects prepared for the Bank to the Ministry of Economy.<sup>24</sup> The exchange of information on the use of funds under the Ignalina Programme through the IIDSF between the EBRD and the Ministry of Economy is also carried out on an informal basis.

It is obvious that the legal acts and rules regulating the IIDSF do not provide sufficient mechanisms for the process of making decisions regarding Lithuania’s participation in relation to the use of the Fund’s resources. In addition, the monitoring and control mechanisms for specific projects are not functioning. Taking due account of the fact that ensuring the funding is directly related to timely fulfilment of Lithuania’s international commitments<sup>25</sup> (which is mainly subject to successful implementation of the Ignalina NPP decommissioning project and fulfilment of specific projects), **the non-involvement of Lithuania, the absence of adequate levers for the use of funds under the Ignalina Programme through the IIDSF, and the asymmetry of (non)formal information movement between the EBRD, the European Commission and Lithuanian responsible institutions are considered to be by the authors of the present Study as one of the major deficiencies of the administration of the Programme through this financial instrument.** In the event of failure, this deficiency would be extremely painful to Lithuania both in political and financial terms. The authors of the Study present potential solutions to this problem in Section 3 of the Report.

#### Funds Accounting and Use:

The account for contributions to the IIDSF is opened with the EBRD. Specifically, EU contributions through the Ignalina Programme to the Fund are made under annual agreements

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<sup>23</sup> Commission Decision No. (2005) 3383 of 8 September 2005 on the programme for the supervision of the decommissioning of the nuclear power plant and related measures in the Lithuanian power sector - p. 10.

<sup>24</sup> Interview with Mr. S. Urbonavičius, Head of the State Enterprise Ignalina NPP Decommissioning Service, dated 18 October 2006.

<sup>25</sup> Paragraph d of Article 3.01 of the IIDSF Rules provides that financing through the IIDSF “*will be conditional upon the Assembly of Contributors being satisfied that the recipient country is in compliance with its closure commitments.*” This provision of the Rules is also emphasised in the decisions of the European Commission to allocate financing to the Ignalina Programme through the IIDSF.

between the Commission and the EBRD regarding contributions<sup>26</sup> and disbursed in compliance with the terms and conditions of the Agreement regarding contributions. From the beginning of the Fund's activities until 2004, the European Commission committed under financial memorandums to transfer to the Fund a total of 209 million euro, whereas during the programming period 2004-2006 the European Commission undertook under its annual decisions to transfer 273 million euro to the IIDSF. Appropriations for the Ignalina Programme to the IIDSF are allocated in compliance with paragraph 7 of Article 53 of Council Regulation No. 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, which provides for joint management of the budget where the European Commission implements the programme together with an international organisation by assigning programme tasks to it. The decision on the allocation of a specific annual amount of appropriations for the Ignalina Programme through the IIDSF is taken with the help of the PHARE Management Committee established under Article 9 of Council Regulation No. 3906/89. The decision is made on an *ad hoc* basis, with regard to planned projects to be implemented according to different funding instruments of the Ignalina Programme and funding needs.

Article 43 of Commission Regulation No. 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation No. 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities provides that "*The appropriations used in joint management with International organisations <...> shall finance actions, performance of which requires the pooling of resources from a number of donors, where it is not reasonably possible or appropriate to assign the share contributed by each donor to each type of expenditure.*" This provision of the Regulation allows for the accumulation of EU contributions together with funds of other contributors, which is done in the IIDSF case (paragraph a) of Part B of the IIDSF Rules). As technological projects of the Ignalina NPP decommissioning are very expensive, the accumulation of funds, first of all, enables the accumulation of EU annual contributions in the Fund which, in its turn, allows for the signing of grant agreements for large-scale projects; second, ensures the existence of the funds reserve, which increases the flexibility of programming and provides opportunities for programming of projects taking due account of the needs of the Ignalina NPP decommissioning process. In addition, payments from the Fund may be made by the Fund as long as the Fund is in operation<sup>27</sup> – there are no restrictions on the use of funds in time (the so-called "N+.." rule is not applicable).

On the other hand, the accumulation of EU funds in the IIDSF has serious drawbacks related to Lithuania's inability to control the fulfilment of EU negotiating commitments. First of all, it is noteworthy that information on the actual use of funds and payment needs is submitted to the Commission by the Bank, who is not legally obliged to discuss payment needs beforehand with responsible Lithuanian institutions.<sup>28</sup> Respectively, due to the delayed implementation of projects which are monitored by the Bank, a risk may arise that Lithuania will not absorb 100% of annual amount of funds from the EU budget foreseen for the Ignalina programme. This risk is further strengthened by another problem of the accumulation of funds through the

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<sup>26</sup> European Commission Decision No. (2004) 4180 of 22 October 2004 and Decision No. (2005) 3383 of 8 September 2005.

<sup>27</sup> Commission Decision No. (2005) 3383 of 8 September 2005 on the programme for the supervision of the decommissioning of the nuclear power plant and consequential measures in the Lithuanian power sector – p.8.

<sup>28</sup> Attention should be paid to the fact that the Bank submits information on the actual use of funds and payment need forecast to the European Commission, whereas the provision of such information to Lithuanian institutions has not been formalised.

IIDSF related to the unused amount of pre-accession assistance, which means that the pace of transfer of funds for the Ignalina Programme 2004-2006 from the EU budget to the EBRD depends on the rapidity of use of the funds that were transferred to the EBRD previously (pre-accession assistance). Meanwhile, Lithuanian institutions do not have any formal mechanisms and levers to control the funds for the Ignalina Programme that were actually paid by the Commission to the Bank *under annual commitments*. In addition, in compliance with the IIDSF Rules, contributions are earmarked for one of the purposes of the Fund but not for specific projects (paragraph f of Article 2.02 of the IIDSF Rules), and therefore, EU funds are not allocated for financing specific measures either, which means that it is impossible to check the actual situation of the use of EU funds *at the project level*.

#### Administration of Projects:

The Bank is directly responsible for the administration of approved projects: submission of applications for financing to the Operating Committee, conclusion of grant agreements, payments and project implementation supervision (Article 4.03 of the IIDSF Rules). However, Section 8 of the Framework Agreement partly contradicts this provision. Under Section 8, the **Bank does not accept any responsibility whatsoever for the implementation of projects**. The same Section indicates that “*any decision relating to the implementation of the Projects, the safe design, construction and operation of the Project Facilities and the operation, closure and decommissioning of the Ignalina NPP will be made exclusively by the competent Lithuanian authorities and the entity designated as the operator of the Project Facilities.*”

Under Article 2 of the Framework Agreement, grant Agreements are concluded directly between the Bank and the Recipient, i.e. the Ignalina NPP and economic subjects related to the implementation of the Fund’s objectives. Article 4 provides that the Republic of Lithuania must take all necessary measures to ensure full and punctual performance by each Recipient (which is owned or controlled by the Republic) of its respective obligations under the Grant Agreements. Furthermore, Article 1 of the Framework Agreement states that the provision of Grants from the resources of the Fund should be complemented by Lithuanian resources. Such resources may be contributed in-kind, in cash from the State Enterprise Ignalina NPP Decommissioning Fund (which is managed by the Ministry of Economy<sup>29</sup>) or otherwise in all stages of the implementation of the Projects. Under the grant agreements, it can be seen that Lithuania’s 10% co-financing practice has been established. Lithuania’s contribution to projects is mainly ensured through the State Enterprise Ignalina NPP Decommissioning Fund. Taking due account of the provision for final responsibility for Lithuanian institutions and co-financing allocated by the Republic of Lithuania for the implementation of projects, **grant agreements should be not bilateral but tripartite** involving the Ministry of Economy as the institution responsible for successful implementation of projects and setting its functions and rights. The conclusion of tripartite grant agreements is particularly important in the event where Ignalina NPP decommissioning measures are implemented by economic subjects which do fall within the sphere of regulation of the Ministry of Economy. For instance, AB Lietuvos Dujos is one of the implementers of Ignalina NPP decommissioning measure plans. The state holds a 17.7% stake in this company but its management rights have been entrusted with the

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Law on the Amendment to the Law on the State Enterprise Ignalina Nuclear Power Plant Decommissioning Fund of 22 June 2006 (Official Gazette *Valstybės Žinios*, 17 7 2006, No. 77-2960), Article 2.

state enterprise State Property Fund, and the Ministry of Economy has no influence on this management.<sup>30</sup>

Section 3 of the Framework Agreement provides that the implementation of each Project shall be managed, coordinated and monitored by a Project Management Unit (hereinafter referred to as the “PMU”) established by the Recipient. The PMU establishes adequate organisational structures to perform specific engineering, procurement or other services. The PMU is staffed with consultants engaged in accordance with the applicable procedures of the Bank and the Fund and with suitably qualified specialists provided by the Recipient. The appointment of the PMU *a priori* is considered to be a measure ensuring more efficient project management; however, at the same time, it represents additional high project implementation costs.<sup>31</sup> According to the representatives of the main recipient, namely the Ignalina NPP Decommissioning Service,<sup>32</sup> the services provided and the functions performed by the PMU were very helpful when fulfilling the first grant agreements; however, their need is decreasing in the light of the recipient’s enhanced administrative capacities, and acquired knowledge of EBRD-funded project implementation. Furthermore, the need to establish the PMU in AB Lietuvos Elektrinė for upgrading and environmental investment projects,<sup>33</sup> where activities (which are mainly related to purchases and equipment installation) are customary to the recipient, is questionable. In the opinion of the authors of the present Study, it would be expedient in the case of each grant to assess project activities, the recipient’s administrative capacities and experience in implementing similar activities and then to take a decision regarding the expediency of the PMU. This possibility is provided for in the grant agreements;<sup>34</sup> therefore, this option should be established in the Framework Agreement as well, in order to save and use the IISDF resources in a more optimal way.

The procurements approved in the grant agreements must be carried out in compliance with the EBRD procurement rules. Only the countries of the Contributors or the countries of operations of the Bank may participate in procurement tenders (Article 5.05 of the IISDF Rules), unless under special circumstances the Assembly of Contributors would decide to authorise procurement from other sources (paragraph 8 of Article 4.01 of the IISDF Rules). The permission to participate in procurement tenders provided only to subjects from the countries of the Contributors or the countries of operations of the Bank does not ensure open competition as it restricts the participation of companies from major nuclear power states (the USA, Canada) in project procurement financed out of the Fund’s resources and thus it does not create conditions for the acquisition of works/goods/services at the market price and, at the same time, the cost-effective use of the Fund’s resources. Attention should be paid to the fact that the procurement rules do not prohibit third parties from participating in tenders on a joint activity basis. However, the joint activity agreement cannot be a solution at all times, especially when it is related to the risk of entrusting technological knowledge to

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<sup>30</sup> Opinion of the National Audit Office of the Republic of Lithuania presented in National Audit Report No. 2020-9-88 “Assessment of the Use of Resources of the Ignalina Nuclear Power Plant Decommissioning Fund” of 19 July 2005 – p.11.

<sup>31</sup> Under the Grant Agreement No. 1 for the Ignalina NPP Project Management Unit (Phase 1) of 5 April 2001, a total grant amount of EUR 13.80 million was allocated for 2001-2004; under the Grant Agreement No. 6 for the Ignalina NPP Project Management Group (Phase 2) of 20 December 2004, a grant amount of EUR 5.96 million was allocated for 2005.

<sup>32</sup> Interview with Mr. S. Urbonavičius, Head of the State Enterprise Ignalina NPP Decommissioning Service, dated 18 October 2006.

<sup>33</sup> 4-year agreement signed with Enprima and Ernst & Young consortium on 29 March 2006.

<sup>34</sup> Article 3.02 of the Grant Agreement “Project Management Unit”.

competitors.<sup>35</sup> Taking due account of the fact that the IIDSF procurement rules may not be amended and that they are considered to be in compliance and that at the same time the rules prohibit contributions to be made by any state concerned,<sup>36</sup> in this case the authors of the Study would propose considering more active encouragement by the Government (Ministry of Economy) of the Republic of Lithuania to the governments of major nuclear power states to make a contribution to the IIDSF. After these states are convinced of the potential economic benefit for their companies' participation in procurement contracts with the value amounting to several tens of million euros by making a minimum contribution to the IIDSF, not only the international contribution would be increased but also conditions would be created for wider competition.

Another negative aspect of project administration is related to Section 6 of the Framework Agreement providing that "all imported and local equipment, materials, works and services financed by the Bank with grants from the Fund shall be free from any and all taxes, customs duties or other fees or mandatory payments levied by, or in the territory of, the Republic of Lithuania. All consultants and other personnel financed with resources from the Fund and assigned to assist in the implementation of the Projects shall be free from any and all taxes or any other fees or mandatory payments levied by, or in the territory of, the Republic of Lithuania."<sup>37</sup> This clause makes a negative impact on public funds. In addition, the responsible Lithuanian institutions have voiced their position regarding the need to amend Article 6 of the Framework Agreement as, in accordance with Directive No. 77/388/EEC regulating the imposition of the value added tax (hereinafter referred to as the "VAT"), privileges or exemption from the VAT may not be applied in such cases, and therefore sanctions may be applied to Lithuania.<sup>38</sup> The solution to this legal collision is not unambiguous for the following reasons:

- 1) the IIDSF was established on the basis of the inter-governmental agreement and **the provisions of Article 53 of the Agreement Establishing the EBRD providing for the non-taxation of the Bank's official operations<sup>39</sup> are directly applicable to it.** Attention should be paid to the fact that the concept of the Bank's "official operations" is broad and it is linked not only to the Bank's administrative functions. Based on the interpretation of paragraph k of Article 1 of the Agreement between the Government of the United Kingdom

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<sup>35</sup> The comment was presented to the Ministry of Economy by the experts of the *Ignalina Nuclear Power Plant Decommissioning Management* Project.

<sup>36</sup> Article 2.02 of the IIDSF Rules.

<sup>37</sup> This clause is not applicable to those consultants or personnel who are permanent residents of the Republic of Lithuania under the relevant tax legislation of the Republic of Lithuania.

<sup>38</sup> The Ministry of Finance of the Republic of Lithuania takes the same position (during the preparation of the present Study, this position was expressed by Ms. D. Brasiūnaitė, Head of the Indirect Tax Division of the Ministry of Finance, and Ms. I.Šimonytė, Secretary of the Ministry of Finance).

<sup>39</sup> The IIDSF was established under Section 18 of the Agreement Establishing the EBRD, which enables the Bank to manage special funds in compliance with the rules of these funds and the provisions of the Agreement Establishing the EBRD. Article 33 of this Agreement indicates that no direct or indirect taxes are imposed on **the fulfillment of the Bank's official operations**. Paragraph k of Article 1 of the Agreement between the Government of the United Kingdom and the Bank of 15 April 1991 (which is considered to be one of the Bank's incorporation documents) explains that the Bank's **official operations** are any operations carried out in compliance with the Agreement Establishing the EBRD and which arise when seeking to achieve the aim of the Bank (indicated in Article 1 of the Agreement), or when performing its functions (listed in Article 2 of the Agreement), or **when carrying out additional functions provided in Article 20 of the Agreement**, including administrative functions. The IIDSF specifically state that the **Fund is managed in compliance with paragraph viii of Article 20.1 of the Agreement**.

and the Bank (which is considered to be one of the Bank's incorporation documents), it may be presumed that any operations **carried out and financed** by the Bank are considered to be official operations of the Bank. These rules are applicable to all members of the Bank (one of which is the EU) and the recipient countries.

- 2) The Framework Agreement between Lithuania and the EBRD is part of international law having precedence over Lithuanian national law. The precedence of international law is embodied in paragraph 3 of Article 138 of the Constitution, in the practice of the Constitutional Court<sup>40</sup> and in paragraph 2 of Article 11 of the Law of the Republic of Lithuania on International Treaties of 9 July 1999.<sup>41</sup> On the other side, the principle of the EU law precedence embodied in Article 2 of the Constitutional Act "On Membership of the Republic of Lithuania in the European Union"<sup>42</sup> is applicable to Lithuanian law as well. During Lithuania's accession into the EU, an obligation was set for Lithuania to terminate international treaties that are in conflict with the Accession Treaty or to harmonise them with EU law, as the *lex posteriori derogat lex priori*<sup>43</sup> principle is not applicable to EU law. However, in this case one can get involved in the polemics of law theory which legal norm (the international legal norm embodied in the Framework Agreement, or the EU legal norm embodied in EU secondary law) has higher precedence, and which one should be harmonised?
- 3) Attention should be paid to the fact that Directive No. 77/388/EEC provides for the opportunity for "*Member States to conclude with <...> international organisations agreements containing derogations from this Directive*", and exemption from taxes is possible provided that the restrictions and conditions are set for international treaties related to the establishment of organisations.<sup>44</sup> It can be concluded, therefore, that the aforementioned EU directive recognises the precedence of international law norms. Taking due account of the clause contained in the Directive, it follows that the provisions of Section 6 of the Framework Agreement may be harmonised with EU law. However, they may be harmonised only to the extent that they are considered to be operations that are **directly** financed by the Bank. The non-taxation of procurement carried out by the recipient and of goods, services and works provided by third parties in the course of implementation of the projects financed by the IIDSF remains questionable as well.

Taking due account of the arguments above, the collision between Section 6 of the Framework Agreement and Directive No. 77/388/EEC can be resolved in two ways. The first way is to obtain the approval of the EU Minister Council of the clause for Lithuania regarding activities

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<sup>40</sup> Official Gazette *Valstybės Žinios*, 1995, No. 9-199, Official Gazette *Valstybės Žinios*, 1995, No. 86-1949.

<sup>41</sup> Law No. VIII-1248 of the Republic of Lithuania on International Treaties of 22 June 1999 (Official Gazette *Valstybės Žinios*, 1999, No. 60-1948).

<sup>42</sup> Law No. IX-2343 of the Seimas of the Republic of Lithuania on the Supplement of the Constitution of the Republic of Lithuania with the Constitutional Act "On Membership of the Republic of Lithuania in the European Union" and the Supplement to Article 150 of the Constitution of the Republic of Lithuania of 13 July 2004 (Official Gazette *Valstybės Žinios*, 2004, No. 111-4123).

<sup>43</sup> The aspect of the application of Community law is noted in the case C-35/76, *Simmenthal SpA v Ministero des finances* at the European Court of Justice (1976).

<sup>44</sup> Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (77/388/EEC), preamble, Article 14 and 15.

funded from the IIDSF grants but, according to the opinion of the Ministry of Finance of the Republic of Lithuania, this possibility is hardly probable. The second way is to initiate an amendment to Article 6 by providing that the Fund's grants may not be used to compensate for direct and indirect taxes applicable in the territory of Lithuania incurred by third parties. In this event, these taxes would be covered by Lithuania, i.e. the recipient (if it is a VAT payer according to the legal acts of the Republic of Lithuania), or they could be financed using resources of the State Enterprise Ignalina Nuclear Power Plant Decommissioning Fund (where the recipient is not a VAT payer according to the legal acts of the Republic of Lithuania). Respectively, the rules for the recognition of VAT on Ignalina NPP decommissioning programme projects as eligible for financing (based on the example of the rules for eligible costs of structural funds) should be approved by a separate order of the Minister of Finance of the Republic of Lithuania.

#### Aspects of Project Implementation:

According to the Ministry of Economy, 329 million euro was allocated (sub-contracted) from the IIDSF to projects directly related to the Ignalina NPP decommissioning activity and 90 million euro for the implementation of the measures in the power sector until May 2006.<sup>45</sup> IIDSF resources are used to finance large-scale complicated and often interdependent technological projects of the Ignalina NPP decommissioning when the results of implementation of one project can determine the contents of other projects, or the implementation of which has been linked chronologically.<sup>46</sup> On the one part, this means that **it is not possible to precisely programme the scope and necessary resources of new projects in each case**. On the other side, one can presuppose that **the failure to implement one project in time may result in the delayed commencement of implementation of other projects**. Projects financed from IIDSF resources are implemented according to the EBRD project management model. The implementation of projects is not divided into stages (designing, preparatory work, implementation) and the model, where one winner of the tender is selected for the implementation of all project stages, has not served the purpose in one of the most important Ignalina NPP decommissioning projects: B1. In the B1 project *The Storage Facility for Spent Nuclear Fuel*, the designing and construction costs were preliminary estimated, with the participation of EBRD experts, at 82 million euro. However, after the contract had been concluded, it became clear that these costs would amount to over 160 million euro.<sup>47</sup> The IIDSF grant agreements usually provide for up to 15% of the budget for contingent costs; however, the actual costs exceeded the planned ones twofold in this case, and thus the grant agreement had to be amended. The amendment to the decision took six months, as it had to be approved in the Assembly of Contributors. It is noteworthy that the signing of the grant agreement and the organisation of the tender from the financing approved by the Assembly of Contributions (June 2002) until the signing of the contract with the contractor (January 2005) took two years and six months. The implementation of the procurement process under another project B2-B4 *Solid Waste Management and Storage Facility* was also prolonged when, during the second stage of international procurement at the

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<sup>45</sup> Ministry of Economy of the Republic of Lithuania. New Project Proposals for the Period 2007-2013 relating to Ignalina Nuclear Power Plant (INPP) Decommissioning Support and Lithuanian Energy Sector Development. – 21 6 2006 – p. 4.

<sup>46</sup> Financial proposal: Special Programme to Support the Decommissioning of Nuclear Power Plants and Consequential Measures in the Energy Sector for Lithuania in 2004 (19 5 2004)

<sup>47</sup> Opinion of the National Audit Office of the Republic of Lithuania presented in National Audit Report No. 2020-9-88 “Assessment of the Use of Resources of the Ignalina Nuclear Power Plant Decommissioning Fund” of 19 July 2005, p.9.

end of 2004, the procurement was terminated due to technical and commercial inaccuracies and resumed in 2005. Such delay in the implementation of projects entails risk related to the implementation schedule set for the measures under the Ignalina NPP Decommission Programme and the timely fulfilment of Lithuania's international commitments to close down Unit No. 2 of the Ignalina NPP. Taking due account of this risk, it is recommended that the Ministry of Economy of the Republic of Lithuania officially record in writing the delays of projects financed from the IIDSF, in particular when the delay is caused by acts (omission) of the Bank. This could be done at the Assembly of Contributors when considering progress by the recipient country in the fulfilment of its commitments<sup>48</sup> or in the format of the Joint Committee.

#### **Summary: Advantages of the Administration of the Ignalina Programme through the IIDSF**

1. A more flexible programming of projects and possibility of financing large-budget projects due to the accumulation of annual Ignalina Programme resources in the Fund and the termless absorption of these funds.

#### **Summary: Disadvantages of the Administration of the Ignalina Programme through the IIDSF**

1. Lithuania is responsible for the use of the Ignalina Programme Funds, however, its participation in taking strategic decisions regarding the use and control of the major part of the Ignalina Programme funds is restricted by its observer status in the IIDSF;
2. Due to the IIDSF Rules, bilateral grant agreements and the non-functioning mechanism for project monitoring and information exchange between the Bank and Lithuania (i.e. the Joint Committee), Lithuania is not informed about the situation related to the use of funds and the forecast at the project level;
3. According to the purposes of the Fund, the Ignalina Programme funds cannot be used to finance all types of activities and projects related to the decommissioning of the Ignalina NPP;
4. Very high costs of Programme (fee to the EBRD) and project (mandatory PMU establishment) administration;
5. IIDSF Rules do not ensure the most effective implementation of the Ignalina Programme in terms of benefit-costs.

## ***2.2. Administration of the Programme through the Programmes Instrument for Ignalina***

### **Legal Basis:**

The Programmes Instrument was developed in 2005 for the financing of nuclear safety, social and small-scale Ignalina NPP decommissioning projects out of funds under the Ignalina Programme. Its principles and procedures are regulated by the following main legal acts:

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<sup>48</sup> Paragraph 13 of Article 4.01 of the IIDSF Rules provides that the Assembly of Contributors periodically reviews progress by the recipient country in the implementation of its closure and decommissioning commitments, and approves measures to be undertaken by the Manager under specific grant agreements to address implementation issues, giving due regard to ensuring the conditionality of these agreements with the recipient country's compliance with its commitments.

1. Protocol No. 4 to the Act of Accession;<sup>49</sup>
2. Council Regulation (EEC) No. 3906/89 of 18 December 1989 on Economic Aid to Certain Countries of Central and Eastern Europe as last amended by Regulation (EC) No. 2500/2001<sup>50</sup>;
3. Commission Decision No. K(2004) 5454 of 27 December 2004 on the programme for the decommissioning of the nuclear power plant and consequential measures in the Lithuanian power sector;
4. Commission Decision No. K (2005) 1841 of 23 June 2005, amending Commission Decision No. K(2004) 5454 of 27 December 2004;
5. Commission Decision No. K(2005) 5676 of 23 December 2005 on the programme for the supervision of the decommissioning of the nuclear power plant and consequential measures in the Lithuanian power sector;
6. Resolution No. 980 “On the Administration of the Ignalina Programme in Lithuania” of 7 September 2005 of the Government of the Republic of Lithuania (Official Gazette *Valstybės Žinios*, 10 9 2005, No. 110-4010).

#### Purpose:

The purpose of the Programmed Instrument for Ignalina is to assist Lithuania in preparing and implementing the commitment to close down the nuclear power plant before the term. Under this Instrument, assistance is provided for those activities that are not financed by the IIDSF and are related to the following:<sup>51</sup>

1. *Assistance in the field of regulation*: activities aimed at supporting Lithuania’s efforts to control the Ignalina NPP decommissioning process. It is noteworthy that the assistance during the period 2004–2006 for the strengthening of the efficiency and competence of state authorities responsible for nuclear safety and state radioactive waste management institutions is provided for Lithuania and other new EU Member States under the Transition Facility<sup>52</sup> in paragraph 2 of Article 34 of the Act of Accession. However, it is allocated to Lithuania under the decisions of the Commission through the Programmed Instrument for Ignalina.
2. *Technical decommissioning of the nuclear power plant*: assistance is provided for the implementation of small-scale technical decommissioning projects at the nuclear power plant;
3. *Human resources*: activity aimed at maintaining a high safety level at the nuclear power plant, including retraining opportunities and alternatives. European Commission decisions emphasise that the EU uses the funds from the Ignalina Programme only for the financing of active labour market measures (training, job subsidising) aimed at the coping with the social consequences caused by the premature decommissioning of the nuclear power plant. It is worth emphasising that during the negotiations over

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<sup>49</sup> OJ L 236, 23 9 2003, p. 944.

<sup>50</sup> OJ L 342, 27 12 2001, p. 1.

<sup>51</sup> Commission Decision No. K(2005) 5676 of 23 December 2004 on the programme for the decommissioning of the nuclear power plant and consequential measures in the Lithuanian power sector.

<sup>52</sup> Under Article 34 of the Act of Accession, in 2004 the PHARE programme was replaced by EU assistance under the Transition Facility aimed at further strengthening the administrative capacities of Lithuanian institutions and facilitating the elimination of gaps in the administrative capacities in the implementation of the Community’s legal acts and ensuring their fulfilment, i. e. at continuing the work commenced under the PHARE programme during the period of accession to the EU, in compliance with the principles of the PHARE programme.

membership in the EU, it was agreed that social guarantees (for instance, severance allowances) will fall within the category of social consequences financed through the Ignalina Programme.<sup>53</sup>

#### Duration:

Article 1 of Protocol No. 4 of the Act of Accession admits that the decommissioning of the Ignalina NPP is a long-term process, to which the EU undertakes to provide “adequate additional assistance to the decommissioning effort beyond 2006.” The completion of the last technological projects for the decommissioning of the Ignalina NPP is scheduled for 2029; however, other related activities will have to be further continued beyond that date.<sup>54</sup> Attention should be paid to the fact that, starting with the financial perspective 2007-2013, the quantity of technological (IIDSF-funded) projects and allocated financing are decreasing and the funding for the activities financed under the Programmed Instrument for Ignalina is expanding respectively. This trend will become even stronger during the subsequent EU financial periods and the significance of the management of the Programmed Instrument for Ignalina NPP will grow respectively in the decommissioning of the Ignalina.

#### Governance and Supervision:

Paragraph 2 of Article 2 of Protocol No. 4 of the Act of Accession indicates that “*measures under the Ignalina Programme shall be decided and implemented in accordance with the provisions laid down in Council Regulation (EEC) No. 3906/89 of 18 December 1989 on economic aid to certain countries of Central and Eastern Europe*<sup>55</sup> as last amended by Regulation (EC) No. 2500/2001.”<sup>56</sup> Taking due account of the aforesaid and Council Regulation (EC) No 1266/1999 of 21 June 1999 on coordinating aid to the applicant countries in the framework of the pre-accession strategy and amending Regulation (EEC) No. 3906/89<sup>57</sup>, **the Programmed Instrument for Ignalina must be programmed and administered during the period 2004-2006 according to the PHARE procedures** by applying the Extended Decentralised Implementation System (EDIS).<sup>58</sup> **Attention should be paid to the fact that**, in respect of the Programmed Instrument for Ignalina, the European Commission and Lithuania have not signed any Memorandum of Understanding on the implementation of the Programme, which would clearly define the limits of responsibility, administrative and financial reporting procedures. The main principles are set forth in the decisions of the Commission regarding appropriations for the implementation of the Ignalina Programme allocated for a particular year but they do not comprise all the management and supervision aspects of the Programme.

Under Resolution No. 980 of the Government of the Republic of Lithuania of 7 September 2005, the administration system for the Ignalina Programme was approved and the functions

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<sup>53</sup> Document registered in the Accession Conference CONF-LT 47/02 REV 1 - November 14, 2002.

<sup>54</sup> Ministry of Economy of the Republic of Lithuania. New Project Proposals for the Period 2007-2013 relating to Ignalina Nuclear Power Plant (INPP) Decommissioning Support and Lithuanian Energy Sector Development. – 21 6 2006 – p. 4

<sup>55</sup> OJ L 375, 23 12 1989, p. 11.

<sup>56</sup> OJ L 342, 27 12 2001, p. 1.

<sup>57</sup> OJ L 161, 36 6 1999, p. 68.

<sup>58</sup> Commission Decision No. K(2005) 5676 of 23 December 2005 on the programme for the supervision of the decommissioning of the nuclear power plant and consequential measures in the Lithuanian power sector – p. 5.

for responsible institutions were determined. Under this resolution, the Ministry of Economy was appointed to act as the responsible institution. Its main functions are related to the organisation of funds administration and co-ordination of funds use under the Programmed Instrument for Ignalina. The public institution Central Project Management Agency (hereinafter referred to as the “CPMA”) is appointed to be the implementing institution responsible for supervision of the implementation of projects funded out of funds under the Programme Instrument for Ignalina. The Ministry of Finance is appointed to be the paying institution, the main function of which is to manage the funds of the Programme Instrument for Ignalina. The **administration system** created under the aforementioned resolution of the Government of the Republic of Lithuania **does not fully comply with the minimum criteria and conditions for programme management according to the EDIS**, as stated in Annex to Council Regulation No. 1266/1999:

- 1) First of all, in compliance with the EDIS principles<sup>59</sup>, responsibility and functions related to the implementation of the Ignalina Programme have not been fully defined and allocated. Specifically, the procedure set for payments to recipients does not comply with the EDIS principles providing for the delegation of these functions to the accredited EDIS implementation agency.<sup>60</sup> For this reason, the implementation of the projects approved by the decision of the European Commission in 2005, where implementers are not the subjects controlled by the Ministry of Economy and, respectively, the Ministry cannot submit payment applications to the Ministry of Finance, is delayed. Currently, the projects approved under Commission Decision No. K(2005) 5676 of 23 December 2005 in the field of assistance regulation (which is entrusted to the VATESI and the Radiation Safety Centre) and those related to assistance to the Ministry of Social Security and Labour in resolving the social consequences of the decommissioning of the Ignalina NPP have not yet been commenced. In this case, particular risk arises in respect of assistance projects for the regulators as the VATESI project, the implementation of which according to the schedule given in the project fiche<sup>61</sup> becomes hardly feasible, may have to be modified because of the N+2 rule applicable to the absorption of funds. Under this project, the VATESI will receive assistance for the licensing or approval of the eight Ignalina NPP decommissioning projects, therefore, the postponement of its implementation entails a direct risk related to the timely fulfilment of Lithuania’s international commitments related to the closure of Unit No. 2 of the Ignalina NPP.

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<sup>59</sup> European Commission, Directorate-Generals for Enlargement and Regional Policy. Preparing for Extended Decentralisation of the Phare and ISPA Programmes. – Working Document, 2003.

<sup>60</sup> Under paragraph 2.3.7 of Resolution No. 980 “On the Administration of the Ignalina Programme in Lithuania” of the Government of the Republic of Lithuania of 7 September 2005, the implementing institution (the CPMA) approves and submits payment requests presented by the beneficiary to the responsible institution (the Ministry of Economy). Based on these requests, under paragraph 2.2.15 of the Resolution, the responsible institution prepares and submits to the paying institution (the Ministry of Finance) payment applications to transfer funds to the beneficiaries indicated in the payment requests. This payment procedure violates the requirement of the EDIS system setting **direct** payments of the Paying Institution to the implementing institution accredited by the European Commission against the payment applications submitted by the latter (European Commission, Directorate-Generals for Enlargement and Regional Policy, Preparing for Extended Decentralisation of the Phare and ISPA Programmes. – Working Document, p.6). The agency accredited according to the EDIS principles for the administration of the Ignalina Programme is the CPMA; therefore, in compliance with the requirements of the EDIS system, this institution must directly submit payment applications to the Ministry of Finance and cover beneficiaries’ costs.

<sup>61</sup> The project fiche indicates that the duration of the project is 25 months, and therefore when applying the N+2 rules, the implementation of the project must start not later than at the beginning of November.

- 2) Another non-compliance with the EDIS principles is the non-regulation of personal responsibility for the administration of the Ignalina Programme and the use of funds. Under Annex to Council Regulation No. 1266/1999 of 21 June 1999, the assistance management system must provide not only for clear institutional but also for personal responsibility for the use of funds. In compliance with Article 45 of Commission Regulation No. 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation No. 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, each institution participating in the administration of the Programme must appoint its authorised officer who would be personally responsible for the Programme administration functions performed by the institution. The EDIS procedures require that the functions and responsibility areas of the national authorised officer, the national assistance co-ordinator and authorised project officers be clearly defined under a national legal act. The national legal act must also embody the obligations assumed by the national authorised officer regarding full financial responsibility and responsibility for the use of funds.

It is noteworthy that during the preparation of this study the draft amendment to the Resolution of the Government of the Republic of Lithuania “On the Administration of the Ignalina Programme in Lithuania” clearly defining institutional and personal responsibility was prepared. The draft amendment to the resolution defines more clearly the functions of the Ministry of Economy as the responsible institution related to the implementation, planning, co-ordination and supervision of the Programme, whereas the issues of the project implementation level in conjunction with the payment of funds to recipients have been transferred to the competence of the CPMA, which is the accredited implementing institution according to the EDIS.

The proposed draft government resolution will also regulate the activities of the Ignalina Programme Supervision Committee to be established under Commission Decision No. K(2005) 5676 of 23 December 2005 m. The decision provides that the Supervision Committee, which involves the representatives of the Commission in its activities, should periodically review progress on the implementation of the Ignalina Programme. After the amendment to the resolution has been adopted, the main legal discrepancies in the administration of the Programmed Instrument for Ignalina 2004-2006 between the legal acts of the EU and the Republic of Lithuania will be eliminated.

#### Funds Accounting and Use:

Appropriations for the Programmed Instrument for Ignalina are allocated in compliance with paragraph b of paragraph 1 of Article 53 and the provisions of Articles 162-170 regulating the implementation of the budget by decentralised management of Council Regulation No. 1605/2002 of 25 June 2002.<sup>62</sup> As mentioned above, assistance is allocated in compliance with the PHARE procedures, on the basis of which the European Commission approved an indicative total programme budget for Lithuania for the whole programming period (assistance of 47 million euro is to be provided through the Programmed Instrument of Ignalina for the period 2004-2006<sup>63</sup>), whereas appropriations are allocated under annual decisions of the Commission. The latter are adopted with the help of the PHARE Management

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<sup>62</sup> OJ L 248, 16 9 2002, p. 1

<sup>63</sup> Financial proposal: Special Programme to Support the Decommissioning of Nuclear Power Plants and Consequential Measures in the Energy Sector for Lithuania in 2004 (19 5 2004) – p.9,

Committee established under paragraph 9 of Council Regulation No. 3906/89, which comprises the representatives of the Member States, and in compliance with the management procedure set in Article 4 of Council Decision No. 468/1999.<sup>64</sup> Detailed project fiches prepared by Lithuania for the projects to be financed under the Ignalina Programme, on which the annual financing proposal prepared by the Commission is based, are submitted to the PHARE Management Committee. Upon the approval of the members of the Committee, the Commission approved the financing decision, on the basis of which a financing memorandum is signed with the recipient country. The Commission adopted two decisions on the allocation of funds to Lithuania through the Programmed Instrument for Ignalina, under which the total amount of up to 28 million euro is to be allocated.<sup>65</sup> Another decision of the Commission regarding 19 euro million will be adopted in 2006. Funds are directly allocated to Lithuania for the decommissioning of the Ignalina NPP through the special account of the State Treasury. Even though Article 6 of Protocol No. 4 of the Act of Accession indicates that “*the contribution under the Ignalina Programme may, for certain measures, amount to up to 100% of the total expenditure;*” however, it also emphasises that “*every effort should be made to continue the co-financing practice established under the pre-accession assistance for Lithuania’s decommissioning effort as well as to attract co-financing from other sources, as appropriate.*” The 2004 and 2005 decisions of the Commission on the allocation of financing to the Ignalina Programme provide for Lithuania’s contributions of 35% and 30% to the common implementation of projects, and this contribution, inclusive of taxes, increases up to 55% and 50%, respectively.

Funds allocated under the Commission decisions to the Ignalina Programme cannot be accumulated – separate accounts must be opened for each annual transfer of the Community’s financial commitments as foreseen by the European Commission. Furthermore, under Article 166 of Council Regulation No. 1605/2002 of 25 June 2002, the N+2 rule is applicable to the absorption of the Programmed Instrument for Ignalina, and there are no term expansion and funds repayment procedures. In addition, strict PHARE procedures for compliance with thresholds of the approved annual financing and separate project budgets are applicable. The responsible institution may independently adopt decisions only regarding amendments of a technical nature to projects and reallocation of 10% of project budgets provided that this has no impact on the purposes / achievement indicators of the projects. The responsible institution must inform the Commission about such amendments in writing, and the Commission has the right to object to this decision within 10 business days. However, in the event that it wishes to reallocate more than 10% of the project budget or if there are any derogations from the objectives / results of the project, or if there are any technical modifications of the project implementation that may change the objectives / results of the project, or the implementation of approved projects has been suspended, the advance consent of the Commission is required. In the event that the amount of reallocations in the annual programme exceeds 10% of the total funds allocated under the respective annual decision, then a new decision of the Commission must be passed.<sup>66</sup>

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<sup>64</sup> Council Decision No. 468/1999 of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred to the Commission.

<sup>65</sup> Commission Decision No. K(2004) 5454 of 27 December 2004 on the Ignalina Programme to Support the Decommissioning of the Nuclear Power Plant and Consequential Measures in the Lithuanian Energy Sector; Commission Decision No. K(2005) 1841 of 23 June 2005 amending Decision No. K(2004) 5454 of 27 December 2004; Commission Decision No. K(2005) 5676 of 23 December 2005 on the Programme to Support the Decommissioning of the Nuclear Power Plant and Consequential Measures in the Lithuanian Energy Sector.

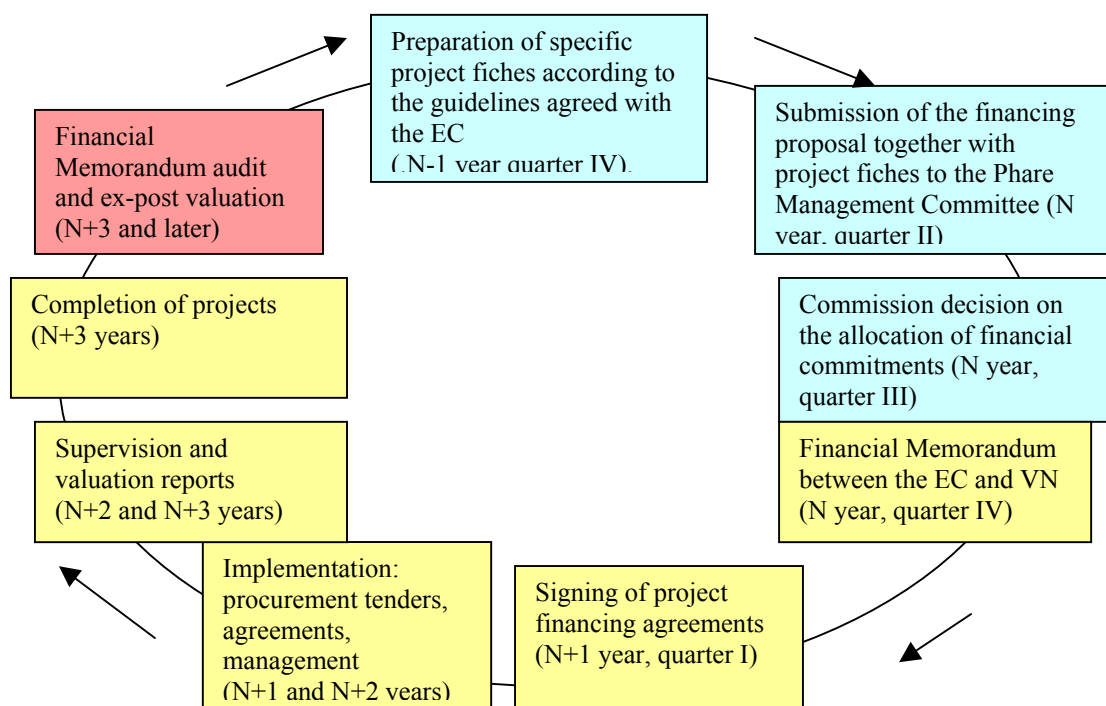
<sup>66</sup> European Commission. Transition Facility: Programming and Implementation Guide (C(2003)4884), 19 December 2003. – p.23-24.

In compliance with the applicable procedures, Lithuanian institutions are responsible for the accounting and use of the funds under the Programmed Instrument for Ignalina for their designated purpose. One of the main advantages of the administration of the Ignalina Programme through the Programme Instrument is that funds are directly allocated to Lithuania through the special account of the State Treasury, and thus national institutions control the fulfilment of the Commission's financial commitments as well as plan, observe and forecast the absorption of funds. However, according to the responsible institutions<sup>67</sup>, the application of the N+2 rule and the restriction of accumulation of funds of separate annual appropriations form limitations on the implementation of both separate projects and the Ignalina Programme. According to the authors of the Study, taking due account of the specifics of the whole programme and separate projects, a more flexible use of funds under the Ignalina Programme could be negotiated with the European Commission and the respective memorandum of understanding could be signed for the implementation of the Ignalina Programme during the period 2004-2006. This memorandum must be signed for the implementation of the Ignalina Programme 2007-2013 through the Programmed Instrument for Ignalina.

#### Programming and Implementation Aspects:

The PHARE requirements are applicable to projects financed out of funds of the Programmed Instrument of Ignalina. The PHARE procedures were used as a basis to develop a consistent programming system for the Programme and separate projects. The whole cycle of the Programme comprising programming, implementation and valuation is clearly sub-divided into stages by identified strict time constraints (see Scheme 2).

*Scheme 2. PHARE Programme Cycle.*



<sup>67</sup> Interview with the representatives of the Nuclear Energy and Radioactive Waste Management Department of the Ministry of Economy held on 23 June 2006 and the interview with the CPMA representatives on 3 October 2006.

In compliance with the PHARE procedures, financing may be approved only for “developed” projects, i.e. project fiches, which are considered to be the main planning instruments, must substantiate in detail the need for projects and their budget (with supporting documents), the planned implementation of the project together with the schedule of procurements to be carried out during the project. In addition, the project must be financially pursuable. Taking due account of the consistent and long project programming stage, when implementing the Ignalina Programme through the Programmed Instrument, **no opportunities have been provided to flexibly respond to the needs of the Ignalina NPP decommissioning process.**

One of the most serious problems related to the application of these rules to the Ignalina Programme is the term of three years for the implementation of projects. In the 2005 decision of the Commission, plans are to finance smaller technological Ignalina NPP decommissioning projects. Taking due account of the fact that Ignalina NPP decommissioning projects are unprecedented, hardly dividable and interdependent, there is a risk in fulfilling the PHARE terms by implementing projects of this nature through the Programmed Instrument. For instance, during the preparation of this Study, the CPMA had doubts regarding a very low level of operation of the storage facility to waste during the implementation of the project.

In summary of the application of the PHARE programming and implementation cycle to the Ignalina Programme and projects financed under it, essential differences must be noted between the PHARE *per se*, for the implementation of which these procedures were developed, and Ignalina programmes. First, from a legal point of view, PHARE assistance and procedures were adapted to third parties and since 1997 it was oriented towards the provision of assistance for the preparation for membership in the EU, whereas the measure that replaced it in 2004 is mainly directed towards the strengthening of administrative capacities of institutions. The Ignalina Programme is mainly intended for the implementation of unprecedented technological projects and related nuclear safety measures. The types of projects funded under these programmes differ as well. The aims of the PHARE Programme are mainly implemented through short-term projects that are not interdependent and the implementation of which is often based on procurement of services. Meanwhile, one of the underlying features of the Ignalina Programme projects is their strong interdependence. Works and supply tenders as well as employment measures or social guarantees intended for the Ignalina NPP employees being dismissed are the most relevant to projects financed under this Programme. Attention should be paid to the duration of these programmes as well: PHARE was planned to help candidate countries to prepare for membership (the maximum duration of the programme is 10 years), whereas the Ignalina Programme was developed for the long-term NPP decommissioning process (the duration of the programme is up to 25 years).

#### **Summary: Advantages of the Administration of the Ignalina Programme through the Programmed Instrument**

1. EU financial assistance is directly administered and responsibility for its use is assumed by Lithuanian institutions;
2. Representatives of all EU Member States (through the PHARE Management Committee) participate on an equal footing in the process of making decisions regarding the allocation of EU financial assistance for the Ignalina NPP decommissioning process;

3. There are administrative capacities of national institutions to manage EU financial assistance in compliance with the PHARE rules (since 2004 the CPMA has been the agency accredited by the European Commission according to the EDIS procedures).

**Summary: Disadvantages of the Administration of the Ignalina Programme through the Programmed Instrument**

1. Legally, PHARE assistance and procedures are adapted to third parties and not the Member States;
2. Differences between the purpose and duration of projects funded under the PHARE and the Ignalina Programmes conditioning the non-adequacy of the application of uniform programming, implementation and funds accounting procedures;
3. The absence of a separate Memorandum of Understanding between the European Commission and Lithuania on the implementation of the Ignalina Programme.

### **3. Alternatives of the Administration of Assistance under the Ignalina Programme during the Period 2007-2013**

The analysis of the legal acts regulating the administration of the Ignalina Programme revealed the main administration problems of the period 2004-2006, which are mainly related to 1) the divided administration of programme funds between the EBRD through the Ignalina International Decommissioning Support Fund and Lithuanian national institutions through the special Programmed Instrument for Ignalina, 2) programming and implementation procedures that are not suitable for specific Ignalina NPP decommissioning projects (in the case of the Programmed Instrument for Ignalina), and 3) insufficient participation of Lithuanian institutions by using and controlling the major share of funds under the Ignalina Programme (in the case of the IIDSF). Below, this Study further analyses the possible scope of innovations of the Ignalina Programme administration during the period 2007-2013 in respect of legal regulation and a few main alternatives. When shaping alternatives, due account is taken not only of the problems of the current administration systems, advantages and disadvantages of different financial instruments under the Ignalina Programme, but also of the major factors for the reconsideration of the administration system of the Ignalina Programme. First, the IIDSF Rules record the ten-year period of the Fund's activities, which requires making a decision regarding Lithuania's position on the (non)continuation of the Fund's activities. Second, there is a variable ratio of projects planned to be financed out of funds under the Ignalina Programme during 2007-2013 (decommissioning projects / projects for liquidation of consequences) for the benefit of activities supported through the Programmed Instrument for Ignalina, which requires an additional assessment of necessary changes of the administration system at the national level.

#### ***3.1. Legal Regulation of the Ignalina Programme during the New Period***

The legal basis for the Ignalina Programme for the period 2007-2013 will be Protocol No. 4 of the Act of Accession and the new Council Regulation on the Ignalina Programme. Sub-paragraph 4 of the Preamble of the proposal presented by the European Commission for the Council Regulation (COM(2004) 624 final) repeats the provision of paragraph 3 of Article 3 of Protocol No. 4 of the Act of Accession that "***the Ignalina Programme for 2004-2006 will be based on the same elements and principles as in 2004-2006.***" This Article implies several things.

First, decisions regarding financing for the Ignalina Programme must be intended and the budget must be carried out in compliance with the principles set in Council Regulation No. 3906/89 on economic aid to certain countries of Central and Eastern Europe referred to in paragraph 2 of Article 2 of Protocol No. 4 of the Act of Accession. As discussed in the previous Section of the present Study, this Regulation regulates the PHARE Programme, the procedures of which are not suitable for Lithuania due to its changed status in the EU decision-making process (it changed from candidate state into member state<sup>68</sup>) and for the Ignalina Programme *per se*; and therefore the reservation of Article 8 of this Regulation

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<sup>68</sup> Respectively, the further implementation of the Programme according to the 2004-2006 principles, i.e. paragraph 4 of Article 53 of the Financial Regulation No. 1605/2002, is legally impossible for Lithuania, as it provides for the implementation of the Community's budget with third parties or temporarily applicable to new members during the period 2004-2006 as a transitional facility.

adopted under Council Regulation No. 2257/2004<sup>69</sup> should be applied to the Ignalina Programme. This reservation reads that “*The Commission may, within the limits established in Article 54 of Council Regulation (EC, Euratom) No. 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, decide to entrust tasks of public authority, and in particular budget implementation tasks to the bodies listed in Article 54(2) of that Regulation. The bodies defined in Article 54(2)(c) of Regulation (EC, Euratom) No. 1605/2002 may be entrusted with tasks of public authority if they are of recognised international standing, comply with internationally recognised systems of management and control, and are supervised by a public authority.*” More clearly, the latter clause creates conditions to implement the Community’s budget in a **centralised indirect** way, and sub-paragraph c of paragraph 2 of Article 54 of Regulation No. 1605/2002 provides the right of the Commission to delegate certain tasks of the implementation of the general budget of the European Communities to national institutions complying with the respective requirements set in the EU legal acts. Seeking to precisely regulate in legal respects the administration of the Ignalina Programme through the Programmed Instrument in the new financial perspective, it is recommended that this reference to Article 8 of Council Regulation No. 3906/89 be included in the preamble of the new Council Regulation on the Ignalina Programme and the Regulation itself would provide that decisions regarding the measures of the Ignalina Programme are implemented with the provisions of sub-paragraph c of paragraph 2 of Article 54 of Regulation No. 1605/2002 regarding the management of the Ignalina Programme. Attention should be paid to the fact that the present draft Council Regulation provides for the possibility of allocating funds under the Ignalina Programme through the IIDSF<sup>70</sup>, whereas the direct attribution of the Ignalina Programme administration functions to national institutions is not mentioned. Without these supplements, the issue regarding the validity of the administration of the Ignalina Programme by Lithuanian institutions will remain legally unregulated and open to different interpretations.

Second, the fact that “*the Ignalina Programme will be seamlessly continued on the same principles*” means that the same **management procedure** specified in Article 4 of Council Decision No. 468/1999 will have to be applied to the decision-making process regarding annual appropriations from the Ignalina Programme. The authors of this Study support the proposal of the experts of the technical assistance project to the Ministry of Economy<sup>71</sup> to establish a new committee for the management of the Ignalina Programme – the Decommissioning Committee – which would replace the PHARE Management Committee which participated in the approval of annual funds for the Ignalina Programme during the period 2004-2006. However, it is necessary to note that the formulation proposed in Article 5 “*Measures under the Ignalina Programme shall be decided and implemented in accordance with the provisions laid down in Articles 53(2) and 54(2)(c) of Council Regulation (EC, Euratom) No. 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities*” provided in the draft position of Lithuania<sup>72</sup> on the draft Council Regulation is not quite right. The Article of Council Regulation No. 1605/2002, to which the reference is made, provides for the budget-implementation method

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<sup>69</sup> Council Regulation (EC) No. 2257/2004 of 20 December 2004 amending Regulations (EEC) No. 3906/1989, (EC) No. 1267/1999, and (EC) No. 2666/2000 so that regard would be taken of the member state’s status granted to Croatia.

<sup>70</sup> Article 5: “*Assistance for the Ignalina Programme provided for in the first paragraph of Article 2 of the present Regulation may be further allocated through the Community’s contribution to the Ignalina International Decommissioning Support Fund managed by the European Bank of Reconstruction and Development.*”

<sup>71</sup> Project of Technical Assistance to the Ministry of Economy in Managing the Decommissioning of the Ignalina Nuclear Power Plant.

<sup>72</sup> Draft Position of 17 October 2006.

but not for the decision-making process. The authors of the present Study propose to respectively revise the formulation of this Article and to make additional corrections in the preamble by incorporating a separate clause (paragraph 12 of the proposed wording of the draft Council Regulation).

Third, the reference in the preamble of the draft Council Regulation to Article 166 of Commission Regulation No. 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation No. 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities presupposes that the annual programming and allocation of appropriations for each year will remain.

Taking due account of the planned legal regulation of the Ignalina Programme during the period 2007-2013 and the main drawbacks of the administration of the Programme during the present period, the authors of the Study formulate the three main alternatives regarding the improvement of the administration of the Ignalina Programme during the new programming period.

### **3.2. First Alternative**

Continuation of the present administration principles, financing sources and procedures of the Ignalina Programme resolving the main administration problems during the period 2004-2006

This alternative is minimal. It proposes to administer the Ignalina Programme during the period 2007-2013, in principle, according to the same principles but eliminating the main drawbacks in the administration of the Programme during 2004-2006 and resolving the problems of legal regulation. Having chosen this alternative, the Lithuanian executive institutions will have to initiate the co-ordination of the decision regarding the extension of the IIDSF activities with the European Commission and the Assembly of Contributors.

**Seeking to eliminate the main drawbacks of the administration of the Ignalina Programme through the IIDSF**, it is proposed to the Ministry of Economy to apply to the Government of the Republic of Lithuania by proposing to initiate the amendments recommended by the authors of this Study to the Framework Agreement between the Republic of Lithuania and the EBRD relating to the Activities of the Ignalina International Decommissioning Support Fund in Lithuania of 5 April 2001 (presented in Annex No. 1). The proposed amendments would be used to resolve the following problems:

- 1) the formal monitoring of the provision of information on the use of funds for Ignalina NPP decommissioning by the EBRD to Lithuania and of the actual fulfilment of the EU negotiating commitments to Lithuania. For this purpose, not only the proposed amendments to the Framework Agreement should be made, but also the Ministry of Economy should initiate the formal information and programme progress monitoring mechanism, namely the establishment of the Joint Committee, the approval of its work regulations, and the organisation of regular Committee meetings;
- 2) the signing of tripartite grant agreements between the EBRD, the Ministry of Economy and the Recipients for ensuring the projects co-financed by the IIDSF and Lithuania would a) allow ensuring the control of the use of Lithuania's funds in the *project*, b) provide additional control leverages to the executive institutions of the Republic of Lithuania in making decisions regarding the course of and progress on the

implementation of projects. Thus, the risk that the Lithuanian executive institutions are not able to supervise directly the most important Ignalina NPP decommissioning projects that are directly related to the timely fulfilment of international commitments regarding the closure of Unit No. 2 of the Ignalina NPP would be decreased;

- 3) the collision between the provision of Article 6 of the Framework Agreement regarding the non-taxation of the activities financed out of the Fund's grants and Directive No. 77/388/EEC would be resolved. The proposed amendments would provide that non-taxation would be applicable only to procurement **directly** financed by the Bank, where respectively the Recipient would implement the project and conclude contracts with third parties, to whom this reservation would not be applied. Taking due account of the fact that, in compliance with the IIDSF grant provision rules, the resources of the Fund may not be used to finance any taxes imposed within the territory of the recipient country, the VAT incurred in the implementation of project activities would be ineligible costs if the Recipient is a VAT payer under the laws of the Republic of Lithuania, or if they are compensated with the resources of the State Enterprise Ignalina Nuclear Power Plant Decommissioning Support Fund, where recipients are not VAT payers. For this purpose, the rules for the recognition of the VAT in the projects of the Ignalina NPP Decommissioning Programme as eligible costs should be additionally approved;
- 4) by considering the necessity to establish the PMU in the case of each Recipient, the administrative costs of the projects financed through the IIDSF would be partially reduced.

Seeking to ensure greater competition in procurement under the projects financed through the IIDSF and to promote a more cost-effective use of IIDSF funds, it is proposed that the Ministry of the Economy submit to the Government for consideration a more active invitation to the governments of major nuclear power states to make a contribution to the IIDSF. At this point, an important role would be given to Lithuanian diplomats who would have to make every effort to convince these states of the potential economic benefit for their companies' participation in procurement contracts with the value of several tens of million euro by making a contribution to the IIDSF.

**Seeking to resolve the drawbacks of the administration of the EU assistance through the Programmed Instrument for Ignalina related to the inappropriate or insufficient legal regulation**, it is proposed to the Ministry of Economy:

- 4) to negotiate over the supplement of the Draft Council Regulation on the Ignalina Programme for 2007-2013 with the following provisions: to include the reference to Article 8 of Council Regulation No. 3906/89 into the preamble of the regulation and to supplement Article 5 of the draft Council Regulation on the management of the Ignalina Programme according to the provisions of sub-paragraph c of paragraph 2 of Article 54 of Regulation No. 1605/2002. In this event, a legal basis would be formed for the implementation of the Ignalina Programme in a centralised indirect way. To supplement Article 5 of the draft Regulation with the wording providing for the administration of parts of the Ignalina Programme through both financial instruments. To negotiate over the expansion of the scope of Article 2 of the Council Regulation providing for the activities financed under the Ignalina Programme by including the allocation of assistance to nuclear safety regulation institutions;
- 5) to sign the Memorandum of Understanding on the administration of the Ignalina Programme during the period 2007-2013 between the European Commission and the

Republic of Lithuania, which would precisely define the tasks of the implementation of the general budget of the European Communities delegated to Lithuanian national institutions related to the administration of funds and projects under the Ignalina Programme. Furthermore, more flexible use of funds under the Ignalina Programme with regard to the specifics of the programme being financed should be agreed on, and this should be recorded in this memorandum. When negotiating over more flexible conditions of funds through the Programmed Instrument for Ignalina, the minimum result of negotiations to be achieved should be the application of the N+5 rule to the absorption of funds.

**The Proposed Action Plan and Time Schedule for the Implementation of the Alternative:**

Time	Action	Executive institution
November 2006	Presentation of proposals regarding supplements to the draft Council Regulation in the working group of the Council Financial Advisors, consideration in the EU Permanent Representatives Committee (Coreper II), approval of the Regulation in the Council	Ministry of Economy
December 2006	Presentation of amendments to the Framework Agreement to the Government of the Republic of Lithuania for discussion	Ministry of Economy
December 2006	Discussion of the amendments to the IIDSF Agreement with the Directorate-General for Energy and Transport of the European Commission	Ministry of Economy
January 2007	Initiation of the establishment of the Joint Committee provided for in the Framework Agreement between the Republic of Lithuania and the EBRD relating to the IIDSF activities in Lithuania of 5 April 2001.	Ministry of Economy
January 2007	Initiation of amendments to the Framework Agreement with the EBRD	Government of the Republic of Lithuania, on the proposal of the Ministry of Economy
January 2007	Promotion of the development of the IIDSFF countries – contributors by diplomatic actions	Ministry of Foreign Affairs on the order of the Government of the Republic of Lithuania
January-February 2007	Negotiations with the Directorate-General for Energy and Transport of the European Commission over the management system, principles and procedures of the Programmed Instrument for Ignalina during the period 2007-2013. The signing of the Memorandum of Understanding on the administration of the Ignalina Programme.	Ministry of Economy
March-August 2007	Implementation of the administration system of the Ignalina Programme 2007-2013:	Ministry of Economy together with the

	preparation of administration procedures and rules, assessment and respective strengthening of the capacities of national institutions to administer new functions, the appointment of the national agency for the implementation of the EU budget in a centralised indirect method, as stated in subparagraph c of paragraph 2 of Article 54 of Regulations No. 1605/2002.	Central Project Management Agency
June 2007	Approval of the Protocol of Amendment and Supplement to the Framework Agreement.	Assembly of Contributors
September 2007	Adoption of the Law of the Republic of Lithuania on the Ratification of the Protocol of Amendment and Supplement to the Framework Agreement between the Republic of Lithuania and the European Bank of Reconstruction and Development relating to the activities of the Ignalina International Decommissioning Support Fund in Lithuania.	Seimas of the Republic of Lithuania on the order of the President
September 2007	Preparation of proposals regarding the draft amendment to the model IIDSF grant agreement and submission to the EBRD.	Ministry of Economy
December 2008	Adoption of the resolution on the prolongation of the Fund's activities in Lithuania.	Assembly of Contributors on the proposal of the Ministry of Economy

Taking due account of the time necessary for the consideration of the alternatives for the Ignalina Programme administration, the schedule for the adoption of the Council Regulation on the Ignalina Programme 2007-2013 and an immediate need to start administrating the Ignalina Programme in the new financial perspective, the proposed first alternative for administration of the Programme (or parts thereof) is considered to be the most probable and feasible to be implemented in practice. All the recommendations on the improvement of administration presented in respect of this alternative are also applicable to the second variant of the Ignalina Programme administration presented below.

### ***3.3. Second Alternative***

The gradual take-over of programming and administration of EU financial assistance through the Ignalina Programme from the EBRD by providing for the management of the whole Ignalina Programme by national institutions from 2014.

Having chosen this alternative, the Lithuanian executive institutions should initiate the coordination of the decision regarding the prolongation of the IIDSF activities until the end of 2015 with the European Commission and the Assembly of Donors. It would be particularly rational to retain the IIDSF as a financial instrument during the period 2007-2013 due to the performance of the large-scale Ignalina NPP decommissioning works scheduled for the first part of the financial perspective. For example, financing for the equipment of a new storage facility for spent nuclear fuel (the implementation of the project is scheduled for 2006-2010),

the budget value of which will exceed the ceiling of the annual commitments of the European Commission<sup>73</sup>, will be best ensured only through the IIDSF flexible programming and accumulation of funds in the Fund.

The IIDSF activity reserve for 2014-2015 has to be provided because of the potential risk related to the delay in the implementation of the projects for the period 2007-2013 funded from IIDSF resources. As the acquired experience in the implementation of projects financed by the IIDSF shows, this risk is highly probable, and thus, after it has been confirmed, the EBRD should complete the administration of the projects for the period 2007-2013, which were allocated funding from the IIDSF.

The preparation of Lithuanian institutions to take over the administration of EU assistance allocated through the Ignalina Programme during the period 2014-2020 from the beginning of the new financial perspective, first of all, should be discussed and agreed with the European Commission. The latter should be demonstrated not only Lithuania's wish but also its capability and readiness to administer the entire financial assistance under the Ignalina Programme from 2014. In order to demonstrate Lithuania's capabilities and readiness, first of all, it is necessary:

- 1) to resolve the current problems of administration of the Programmed Instrument for Ignalina, which prevent the commencement of successful absorption of funds allocated under the 2005 decision of the European Commission;
- 2) to start implementing, in a consistent manner, the administration system of the Programmed Instrument for Ignalina according to the centralised indirect procedure for the implementation of EU programmes<sup>74</sup> from 2007. Currently, the Ministry of Economy has prepared the draft principles for the Ignalina Programme funds programming and implementation<sup>75</sup>, which may serve as a good basis for the development of this system;
- 3) Lithuania's clear position on the financing of smaller and medium-scale projects through the Programmed Instrument for Ignalina should be demonstrated in the Committee assisting the European Commission to take decisions regarding the approval of new technological projects. Every effort should be made to take over by 2010 the programming and administration of the majority of technological projects that have been traditionally financed under the IIDSF, leaving the completion of the projects being implemented for the EBRD competence until the end of 2015.

#### **Proposed Action Plan and Time Schedule for the Implementation of the Alternative:**

Time	Action	Executive institution
November 2006	Presentation of proposals regarding	Ministry of Economy

<sup>73</sup> The Plan of Implementation Measures for the Decommissioning of Unit No. 1 and Unit No. 2 of the State Enterprise Ignalina Nuclear Power Plant approved by the Minister of Economy of the Republic of Lithuania, Order No. 4-168 of 16 May 2006.

<sup>74</sup> The authors of the Study presume that the Council Regulation on the Ignalina Programme for 2007-2013 will provide for the method of implementation of the Programme in compliance with the provisions of sub-paragraph c of paragraph 2 of Article 54 of Council Regulation No. 1605/2002 of 25 June 2002 on the Financial Regulation Applicable to the General Budget of the European Communities.

<sup>75</sup> Prepared by the experts of the project of technical assistance to the Ministry of Economy for management of the Ignalina Nuclear Power Plant Decommissioning.

	supplements to the draft Council Regulation in the working group of the Council Financial Advisors, consideration in the EU Permanent Representatives Committee (Coreper II), approval of the Regulation in the Council	
December 2006	Presentation of amendments to the Framework Agreement to the Government of the Republic of Lithuania for discussion	Ministry of Economy
December 2006	Discussion of the amendments to the IISDF Agreement with the Directorate-General for Energy and Transport of the European Commission	Ministry of Economy
January 2007	Initiation of the establishment of the Joint Committee provided for in the Framework Agreement between the Republic of Lithuania and the EBRD relating to the IISDF activities in Lithuania of 5 April 2001.	Ministry of Economy
January 2007	Initiation of amendments to the Framework Agreement with the EBRD	Government of the Republic of Lithuania on the proposal of the Ministry of Economy
January 2007	Promotion of the development of the IISDF countries – contributors by diplomatic actions	Ministry of Foreign Affairs by order of the Government of the Republic of Lithuania
January-February 2007	Negotiations with the Directorate-General for Energy and Transport of the European Commission over the management system, principles and procedures of the Programmed Instrument for Ignalina during the period 2007-2013. The signing of the Memorandum of Understanding on the administration of the Ignalina Programme.	Ministry of Economy
March-August 2007	Implementation of the administration system of the Ignalina Programme 2007-2013: preparation of administration procedures and rules, assessment and respective strengthening of the capacities of national institutions to administer new functions, the appointment of the national agency for the implementation of the EU budget in a centralised indirect method, as stated in subparagraph c of paragraph 2 of Article 54 of Regulation No. 1605/2002.	Ministry of Economy together with the Central Project Management Agency
June 2007	Approval of the Protocol of Amendment and Supplement to the Framework Agreement.	Assembly of Contributors
September 2007	Adoption of the Law of the Republic of Lithuania on the Ratification of the Protocol of Amendment and Supplement to the	Seimas of the Republic of Lithuania on the proposal of the

	Framework Agreement between the Republic of Lithuania and the European Bank of Reconstruction and Development relating to the activities of the Ignalina International Decommissioning Support Fund in Lithuania.	President
September 2007	Preparation of proposals regarding the draft amendment to the model IIDSF grant agreement and submission to the EBRD.	Ministry of Economy
January 2008	Presentation of the plans to the European Commission regarding the gradual take-over of the programming and administration of EU financial assistance through the Ignalina Programme from the EBRD.	Ministry of Economy
From January 2008	Development of the administrative capacities, competence and human resources of the institutions participating in the administration of the Ignalina Programme (most importantly, of the executive and implementing institutions) in order to ensure the efficient administration of the major part of the Ignalina Programme, and in particular of technological projects.	Ministry of Economy together with the Central Project Management Agency
From June 2008	When adopting decisions in the Programme Management Committee on funding sources for the Ignalina Programme projects, to negotiate on an <i>ad hoc</i> basis over the financing of every small- and medium-budget technological project through the Programmed Instrument for Ignalina, thus expanding the share of EU financial assistance allocated through the Programmed Instrument for Ignalina.	Ministry of Economy
December 2008	Adoption of the resolution on the prolongation of the Fund's activities in Lithuania until 2015.	Assembly of Contributors on the proposal of the Ministry of Economy
From January 2013	Organisation of the readiness to take over the management of all EU financial assistance through the Programmed Instrument for Ignalina from 2014.	Ministry of Economy

### 3.4. Third Alternative

Accumulation of EU assistance for the Ignalina NPP decommissioning in the special account of the Lithuanian State Treasury and its implementation through the special multi-year budget programme and subsequent administration through two financial instruments (Programmed Instrument for Ignalina and the IIDSF) until 2010. The take-over of the administration of all EU financial assistance from 2010.

This alternative is based on the new Ignalina Programme administration model proposed by the experts providing technical assistance to the Ministry of Economy. The main innovation of the Ignalina Programme administration is the consolidation of all EU funds allocated for the Ignalina Programme in the special account of the Lithuanian Treasury. Under the proposed scheme, the Ministry of Economy would be responsible for annual programming of all the projects funded under the Ignalina Programme and the presentation of the proposal to the Commission regarding the specific financial instrument for the financing and implementation of the project. The advantages of the proposed Ignalina Programme administration scheme are obvious. In this way, Lithuania would become the largest payer of contributions into the IISDF and under the Rules of the Fund would acquire all the rights to participate in the process of making strategic decisions and control of the use of the Fund's resources. For this reason, this option would resolve the main problems of the administration of the Programme through the IISDF without amending the provisions of the Framework Agreement and the Rules of the Fund.

When implementing this alternative, the IISDF activities would be terminated as provided in Article 6 of the Rules of Establishment of the Fund. From 2010, the administration of all EU financial assistance through the Ignalina Programme should be transferred to the Lithuanian national institutions. During the period 2010-2013, the EU financial assistance through the Ignalina Programme administered only by the Lithuanian national institutions would amount up to 420 million euro.

#### **Proposed Action Plan and Time Schedule for the Implementation of the Alternative:**

Time	Action	Executive institution
November 2006	Presentation of proposals regarding supplements to the draft Council Regulation in the working group of the Council Financial Advisors, consideration in the EU Permanent Representatives Committee (Coreper II), approval of the Regulation in the Council	Ministry of Economy
January 2007	Initiation of the establishment of the Joint Committee provided for in the Framework Agreement between the Republic of Lithuania and the EBRD relating to the IISDF activities in Lithuania of 5 April 2001.	Ministry of Economy
January 2007	Promotion of the development of the IISDF countries – contributors by diplomatic actions	Ministry of Foreign Affairs on the proposal of the Government of the Republic of Lithuania
January-March 2007	Negotiations with the Directorate-General for Energy and Transport of the European Commission over the management system, principles and procedures of the Programmed Instrument for Ignalina during the period 2007-2013 (i.e. over the Memorandum of Understanding). The mandatory result to be achieved in the negotiations – consolidation of the funds allocated by the EU to the	Ministry of Economy

	Ignalina Programme in the special account of the State Treasury.	
March-August 2007	Implementation of the administration system of the Ignalina Programme 2007-2013: preparation of administration procedures and rules, assessment and respective strengthening of the capacities of national institutions to administer new functions, the appointment of the national agency for the implementation of the EU budget in a centralised indirect method, as stated in subparagraph c of paragraph 2 of Article 54 of Regulation No. 1605/2002.	Ministry of Economy together with the Central Project Management Agency
January 2008	Presentation to the European Commission of the plans to take over the management of all EU financial assistance through the Ignalina Programme from January 2010.	Ministry of Economy
June 2008	Adoption of the resolution on the completion of the Fund's activities in Lithuania in 2010 at the Assembly of Contributors.	Assembly of Contributors on the proposal of the Ministry of Economy
From January 2009	Organisation of the preparedness to take over the management of all EU financial assistance through the Ignalina Programme from 2010.	Ministry of Economy

This variant is considered to be the most risky as it requires adequate strengthening of the administrative capacities and implies assuming greater political responsibility for the success of the implementation of the Ignalina Programme before the close date of the closure of Unit No. 2 of the Ignalina NPP. Attention should be paid that the new system should start functioning in 2007; therefore, the consideration of this variant at the national level started too late, and no specific strategic and administration plans for the implementation of this alternative have been drafted and presented to the Directorate-General for Energy and Transport of the European Commission, and thus the approval by the European Commission of its implementation is hardly probable.

## **4. Recommendations**

1. The main recommendation is to choose the second alternative proposed in the present Study for the administration of the Ignalina Programme during the period 2007-2013 and to carry out the actions necessary for its implementation, as indicated in the action plan for the implementation of the alternative.
2. To apply to the Government of the Republic of Lithuania with a proposal to initiate the recommended amendments to the Framework Agreement between the Republic of Lithuania and the EBRD Relating to the Activities of the Ignalina International Decommissioning Support Fund in Lithuania of 5 April 2001 (Annex No. 1).
3. To initiate the establishment of the formal monitoring mechanism for information exchange and project progress – the Joint Committee – provided in the Framework Agreement and to approve its work regulations.
4. To officially record in writing the delay of projects financed from the IISDF, particularly in these cases when this delay is caused by actions (omission) of the Bank. This could be done at the Assembly of Contributors or in the format of the Joint Committee.
5. To negotiate over the provisions of the supplement to the draft Council Regulation on the Ignalina Programme during 2007-2013 presented in this Report.
6. To sign the Memorandum of Understanding on the administration of the Ignalina Programme during 2007-2013 between the European Commission and the Republic of Lithuania.

## Sources

### Legal acts:

1. Agreement between the European Commission and the EBRD for the establishment of the IIDSF signed on 30 March 2000
2. Resolution of 12 June 2000 of the EBRD Board of Directors on the Establishment of the IIDSF
3. Rules of the IIDSF approved by the EBRD Board of Directors on 7 March 2001
4. Framework Agreement No. IX-468 of 12 July 2001 between Republic of Lithuania and European Bank for Reconstruction and Development Relating to the Activities of the Ignalina International Decommissioning Support Fund in Lithuania
5. LR Vyriausybės 2002 m. gegužės 28 d. priėmė nutarimas Nr. 757 „Dėl Lietuvos Respublikos ir Europos rekonstrukcijos ir plėtros banko bendrosios sutarties dėl Ignalinos AE eksploatavimo nutraukimo rėmimo fondo veiklos Lietuvoje įgyvendinimo“ (Žin., Nr. 54-2128).
6. Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic - Protocol No 4 on the Ignalina nuclear power plant in Lithuania
7. Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to certain countries of Central and Eastern Europe
8. Council Regulation (EC) No 1266/1999 of 21 June 1999 on coordinating aid to the applicant countries in the framework of the pre-accession strategy and amending Regulation (EEC) No 3906/89
9. Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission
10. Council Regulation (EC) No 2257/2004 of 20 December 2004 amending Regulations (EEC) No 3906/89, (EC) No 1267/1999, (EC) No 1268/1999 and (EC) No 2666/2000, to take into account of Croatia's candidate status
11. Decision No K(2004) 5454 of the Commission of the European Communities of 27 December 2004 on Ignalina Programme Relating to the Support of the Decommissioning of the Nuclear Power Plants and Consequential Measures in the Energy Sector in Lithuania
12. Decision No K(2005) 1841 of the Commission of the European Communities of 23 June 2005 amending Decision No K(2004) 5454
13. 2005 m. gruodžio 23 d. Komisijos sprendimas dėl programos, skirtos atominės elektrinės eksploatavimo nutraukimui ir su tuo susijusioms priemonėms Lietuvos energetikos sektoriuje remti, priežiūros Nr. K(2005) 5676
14. 2005 m. rugsėjo 8 d. Komisijos sprendimas Nr. (2005) 3383 dėl programos, skirtos atominės elektrinės eksploatavimo nutraukimui ir su tuo susijusioms priemonėms Lietuvos energetikos sektoriuje remti, priežiūros
15. Government of the Republic of Lithuania Resolution No. 980 of 7 September 2005 on Administration of the Ignalina Programme in Lithuania
16. 2005 m. vasario 2 d. Lietuvos Respublikos Vyriausybės nutarimas Nr. 117 „Dėl Valstybės įmonės Ignalinos atominės elektrinės pirmojo ir antrojo blokų eksploatavimo nutraukimo programos patvirtinimo“ (Žin., 2005 02 05, Nr. 17-536 )
17. Proposal for a Council Regulation on the implementation of Protocol No 4 on the Ignalina nuclear power plant in Lithuania, as annexed to the Act concerning the

- conditions of accession to the European Union of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia "Ignalina Programme" / COM/2004/0624 final /
18. Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities
  19. Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities
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  22. 2006 m. birželio 22 d. Valstybės įmonės Ignalinos atominės elektrinės eksploatavimo nutraukimo fondo įstatymo pakeitimo įstatymas (Žin., 2006 07 14, Nr. 77-2960
  23. 2006 gegužės 16 d. LR ūkio ministro įsakymu Nr. 4-168 patvirtintas valstybinės įmonės Ignalinos atominės elektrinės pirmojo ir antrojo blokų eksploatavimo nutraukimo programos įgyvendinimo priemonių planas
  24. Republic of Lithuania Law No. VIII-1248 of 22 June 1999 on Treaties
  25. Republic of Lithuania Constitutional Act No. IX-2343 of 13 July 2004 on membership of the Republic of Lithuania in the European Union
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2. European Commission, Directorate-Generals for Enlargement and Regional Policy. Preparing for Extended Decentralisation of the Phare and ISPA Programmes. – Working Document, 2003.
3. Maniokas, K., Stanionis, R. Negotiations on Decommissioning Ignalina Nuclear Power Plant // Maniokas, K., Vilpišauskas, R., Žeruolis, D. (ed.), Lithuania's Road to the European Union, Vilnius, Eugrimas, 2005, - P. 297-349
4. Ministry of Economy of the Republic of Lithuania. New Project Proposals for the Period 2007-2013 relating to Ignalina Nuclear Power Plant (INPP) Decommissioning Support and Lithuania Energy Sector Development. – 21.06.2006.
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## ANNEX 1

Draft

### PROTOCOL OF AMENDMENT AND SUPPLEMENT TO

### **THE FRAMEWORK AGREEMENT BETWEEN THE REPUBLIC OF LITHUANIA AND THE EUROPEAN BANK OF RECONSTRUCTION AND DEVELOPMENT RELATING TO THE ACTIVITIES OF THE IGNALINA INTERNATIONAL DECOMMISSIONING SUPPORT FUND IN LITHUANIA**

Seeking to ensure more efficient activities of the Ignalina International Decommissioning Support Fund in Lithuania and to harmonise them with the requirements of the legal norms of the European Union,

the Government of the Republic of Lithuania and the European Bank of Reconstruction and Development (hereinafter referred to as the “Parties”),

hereby agree as follows:

#### **Section 1. Supplement to Section 2.**

1. To supplement the first sentence of paragraph a) of Section 2 with the words “in conjunction with the institution authorised by the Government of the Republic of Lithuania” and set it forth as follows:

“a) All Grants provided under Section 1 shall be subject to the conclusion of Grant Agreements between the Bank on behalf of the Fund in conjunction with the institution authorised by the Government of the Republic of Lithuania and the relevant Recipient.”

2. To supplement sub-paragraph i) of paragraph b of Section 2 with the words “the institution authorised by the Government of the Republic of Lithuania” and set it forth as follows:

“i) be concluded directly between the Bank, the institution authorised by the Republic of Lithuania and the Recipient.”

#### **Section 2. Amendment and Supplement to Section 3.**

1. To delete the words “each” and to supplement it with the words “which must be” and “if it is provided in the grant agreement” by setting it forth as follows:

“a) The implementation of the Project shall be managed, coordinated and monitored by a Project Management Unit (herein called the “PMU”) which must be established by the Recipient, if it is provided in the grant agreement.”

#### **Section 3. Amendment and Supplement to Section 5.**

1. To supplement paragraph a) of Section 5 with the following new sub-paragraph ii):

“ii) payments made by the Bank to the Recipient (s) under separate grant agreements and the forecast of payment needs when implementing Projects”;

2. To consider sub-paragraph ii) as sub-paragraph iii) of paragraph a) of Article 5.

3. To consider sub-paragraph iii) as sub-paragraph iv) of paragraph a) of Article 55 and to set it forth as a new wording:

“iv) the situation regarding the Ignalina Programme funds that have been actually disbursed to the Bank by the European Commission according to its annual commitments.”

4. To supplement paragraph a) of Section 5 with the following new sub-paragraph v):

“v) other matters relevant to the implementation of the Framework Agreement.”

5. To supplement Section 5 with the new paragraph c) as follows:

“c) The Joint Committee shall convene its meeting at least once every three months. Its meetings shall be held within the Republic of Lithuania.”

#### **Section 4. Amendment and Supplement to Section 6.**

1. To replace the word “financed” in the first sentence of paragraph a) of Section 6 with the phrase “directly reimbursed” and to supplement paragraph a) with the sentence “Grants from the Fund may not be used to compensate for indirect and direct taxes applicable in the Republic of Lithuania incurred by third parties when implementing Projects.”

2. To set forth paragraph a) of Section 6 as follows:

“a) All imported and local equipment, materials, works and services directly reimbursed by the Bank with Grants from the Fund shall be free from any and all taxes, customs duties or other fees or mandatory payments levied by, or in the territory of, the Republic of Lithuania. Grants from the Fund may not be used to compensate for indirect and direct taxes applicable in the Republic of Lithuania incurred by third parties when implementing Projects.”

3. To supplement paragraph b) of Section 6 with the phrase “directly by the Bank” and set it forth as follows:

“b) All consultants and other personnel financed directly by the Bank with resources from the Fund and assigned to assist in the implementation of the Projects shall be free from any and all taxes or any other fees or mandatory payments levied by, or in the territory of, the Republic of Lithuania.”

#### **Section 5. Effective Date of the Protocol.**

This Protocol shall become effective on the date of due approval and authorisation of this Protocol by the Assembly of Contributors of the Fund and of the mutual notification of the

Parties of their full compliance with all the necessary requirements set for the ratification of the amendment and supplement to the Agreement.

DONE on ..... 2007 in two (2) copies each in the English and Lithuanian languages. In the event of any dispute or divergence of interpretation in relation to this Protocol the English text shall prevail.

ON BEHALF OF

THE GOVERNMENT OF THE  
REPUBLIC OF LITHUANIA

ON BEHALF OF

THE EUROPEAN BANK FOR RECONSTRUCTION  
AND DEVELOPMENT

FRAMEWORK AGREEMENT

**BETWEEN THE REPUBLIC OF LITHUANIA AND THE EUROPEAN BANK OF  
RECONSTRUCTION AND DEVELOPMENT RELATING TO THE ACTIVITIES OF  
THE IGNALINA INTERNATIONAL DECOMMISSIONING SUPPORT FUND IN  
LITHUANIA**

Dated: 5 April 2001

**PREAMBLE**

WHEREAS in 1999, the Republic of Lithuania adopted its National Energy Strategy by Resolution No. VII-1348 of the *Seimas* (the Lithuanian Parliament on 5 October 1999 (the “National Energy Strategy”) and decided that in line with the Nuclear Safety Account Grant Agreement, Unit 1 of the Ignalina Nuclear Power Plant will be closed down before the year 2005, taking into consideration the terms and conditions of long-term and considerable financial assistance from the European Union, G7 countries and other states as well as international financial institutions; and that the issue pertaining to the conditions and precise final date for the decommissioning of Unit 2 of the Ignalina Nuclear Power Plant shall be solved in the updated National Energy Strategy to be prepared in the year 2004 (the above decisions hereafter being referred to as the “Closure and Decommissioning of Ignalina NPP”);

WHEREAS the Republic of Lithuania has adopted the Law No. VIII-1661 on the decommissioning of Unit 1 of the Ignalina Nuclear Power Plant on 2 May 2000, and has drawn up respective implementing plans and decommissioning programmes;

WHEREAS the first Donor’s “Conference for the Decommissioning of the Unit 1 of Ignalina NPP” organised by the Lithuanian Government in co-operation with the European Commission and the EBRD which took place on 20 June 2000, represented the start of a long-term process, in the course of which assistance will be solicited from the international community in helping to bear the expenses involved in the decommissioning process itself, as well as in the consequent restructuring of the energy sector;

WHEREAS the Government of Lithuania is responsible for the implementation of the Closure and Decommissioning of the Ignalina NPP in accordance with the National Energy Strategy;

WHEREAS the public administration and respective specialised agencies of the Republic of Lithuania are responsible to act in the execution of implementation steps and the operator of the Ignalina NPP is charged with the execution of the Closure and Decommissioning of Ignalina NPP and the elaboration of pre-decommissioning and decommissioning projects in line with the countries’ closure decisions as set out in the National Energy Strategy;

WHEREAS the parties recognise the importance to Closure and Decommissioning of Ignalina NPP;

WHEREAS pursuant to the Rules of the Ignalina International Decommissioning Support Fund (herein called the "Fund") the European Bank for Reconstruction and Development (herein called the "Bank") has agreed to administer grant funds to be made available by the Contributors of the Fund to finance or co-finance, through grants, the preparation and implementation of selected projects concerning the provision of technical assistance and the acquisition, installation and placing into operation of equipment necessary to support the decommissioning of the Ignalina NPP and measures in the energy sector which are consequential to the decision of the Republic of Lithuania for the Closure and Decommissioning of Ignalina NPP which would assist the necessary restructuring, upgrading and modernisation of the energy production, transmission and distribution sectors as well as to improve energy efficiency (herein called the "Projects");

WHEREAS it is recognised by the Republic of Lithuania that the provision of grants through the Fund has to be complemented by Lithuanian resources (e.g. through in-kind contributions and cash contributions from the State Enterprise Ignalina NPP Decommissioning Fund) in all stages of the implementation of the Projects;

WHEREAS it is recognised by the Republic of Lithuania that the Bank acts solely in its capacity of administrator of funds for and on behalf of the Contributors to the Fund and that this activity is independent from its role as a financial institution supporting investment projects consistent with sound banking principles;

WHEREAS the Republic of Lithuania and the Bank wish to establish a framework to govern the operation of the Fund and the provision of grants for the implementation of the Projects in Lithuania;

NOW, THEREFORE, the parties hereby agree as follows:

#### Section 1. Grants and Lithuanian Resources

a) The Bank shall provide financing on a grant basis from the resources of the Fund (herein called the "Grants") to finance or co-finance the implementation of Projects in support of decommissioning work at Ignalina NPP and measures in the energy sector which are consequential to the decisions of the Republic of Lithuania for the closure and decommissioning of Ignalina NPP through the provision of technical assistance and the acquisition, installation and placing into operation of equipment.

b) The provision of Grants will be made in accordance with the Rules of the Fund and shall be subject to the availability of funds contributed to the Fund and to approval by the competent organs of the Fund.

c) Grants will be made available to Ignalina NPP and to other entities relevant to the achievement of the purpose of the Fund (herein called the "Recipient(s)").

d) The provision of Grants from the resources of the Fund shall be complemented by Lithuanian resources. Such resources will be contributed in-kind, in cash from the State Enterprise Ignalina NPP Decommissioning Fund or otherwise in all stages of the implementation of the Projects. The Lithuanian resources will be specified by reference to the various components of the Projects and will be determined in the Grant Agreements entered into pursuant to Section 2.

e) The Bank shall employ its best efforts to solicit, at the request of the Assembly of Contributors of the Fund, further financial assistance in the form of contributions to the Fund.

## Section 2. Grant Agreements

a) All Grants provided under Section 1 shall be subject to the conclusion of Grant Agreements between the Bank on behalf of the Fund **in conjunction with the institution authorised by the Government of the Republic of Lithuania** and the relevant Recipient and shall be implemented in accordance with the terms and conditions set forth or referred to in the relevant Grant Agreements.

b) Grant Agreements shall:

i) be concluded directly between the Bank, **the institution authorised by the Republic of Lithuania** and the Recipient,

ii) make specific reference to this Framework Agreement, and shall be consistent with it.

## Section 3. Implementation of the Projects

a) The implementation of ~~each~~ **the** Project shall be managed, coordinated and monitored by a Project Management Unit (herein called the "PMU") **which must be established** by the Recipient, **if it is provided in the grant agreement**. The PMU shall establish adequate organisational structures to perform specific engineering, procurement or other services. The PMU shall be staffed with consultants engaged in accordance with the applicable procedures of the Bank and the Fund and with suitably qualified specialists provided by the Recipient. The relevant Grant Agreement shall contain the specific provisions relating to the responsibilities, establishment and operation of the PMU.

b) The goods, works and services, including consultants' services, required for the Projects and to be financed with the resources from any Grant shall be procured in accordance with the Rules of the Fund and the specific provisions of the relevant Grant Agreements.

c) Duly authorised representatives of the Bank shall be authorised from time to time to inspect the records and accounts relating to any Project and to make copies thereof and to audit and examine such records and accounts and the use of any goods and services provided under this Framework Agreement and the relevant Grant Agreement.

## Section 4. Project Implementation Support Undertakings

a) The Republic of Lithuania shall take all necessary measures to ensure full and punctual performance by each Recipient (who is owned or controlled by the Republic) of its respective obligations under the Grant Agreements.

b) Without limitation to the obligations set forth in paragraph (a) of this Section, the Republic of Lithuania shall take all necessary measures to:

i) take or cause to be taken all action, including the timely provision of funds, insurance replacement guarantees, facilities, services and other resources, necessary or appropriate for the implementation of the Projects, and to enable each Recipient to perform its respective obligations in accordance with the provisions of the Grant Agreements;

ii) not take or permit to be taken any action which would prevent or interfere with such performance;

iii) ensure the timely consideration of applications for all licences, permits, approvals and the prompt customs clearances necessary for the prompt and efficient implementation of all Projects;

iv) ensure that the State Nuclear Power Safety Inspectorate (herein called "VATESI") and other authorities in charge of the licensing and certification of the Projects are provided with established policies and regulations and sufficient qualified staff resources, facilities and funds with which to be assured that the regulatory approval process scheduled in the Projects will be performed; and

v) ensure that, in the case of merger, reorganisation, liquidation or privatisation of a Recipient, VATESI or other authorities in charge of the licensing and certification of the Projects, the rights and obligations of such entity under the Grant Agreements are transferred to the Government of the Republic of Lithuania or to a legal person or entity which is empowered to and has the necessary resources for exercising such rights and fulfilling such obligations.

c) The Republic of Lithuania shall take all necessary measures to ensure that:

i) in line with the Nuclear Safety Account Grant Agreement, Unit 1 of the Ignalina NPP is closed down before the year 2005, taking into consideration the terms and conditions of long-term and considerable financial assistance from the European Union, G7 countries and other states as well as international financial institutions; and

ii) that the issue pertaining to the conditions and precise final date for the decommissioning of Unit 2 of the Ignalina NPP is solved in the updated National Energy Strategy to be prepared in the year 2004.

#### Section 5. Joint Committee

a) The Republic of Lithuania and the Bank shall establish a Joint Committee in order to exchange information on and discuss the implementation of this Framework Agreement, and in particular:

i) progress achieved in the implementation of the Projects;

**ii) payments made by the Bank to the Recipient (s) under separate grant agreements and the forecast of payment needs when implementing Projects;**

~~ii) iii) obstacles and problems encountered in the implementation of project components; and~~

~~iii) iv) other matters relevant to the implementation of the Projects~~  
**the situation regarding the Ignalina Programme funds that have been actually disbursed to the Bank by the European Commission according to its annual commitments;**

**v) other matters relevant to the implementation of the Framework Agreement.**

b) The Joint Committee will be composed of competent senior representatives of the Lithuanian Government, the Recipient (s), VATESI, other entities involved in the implementation of the Projects and the Bank. The Joint Committee may invite to participate in the work of the Joint Committee representatives from governmental and other entities involved in matters pertaining to this Framework Agreement.

**c) The Joint Committee shall convene its meeting at least once every three months. Its meetings shall be held within the Republic of Lithuania.**

## Section 6. Taxation

a) All imported and local equipment, materials, works and services ~~financed~~ **directly reimbursed** by the Bank with Grants from the Fund shall be free from any and all taxes, customs duties or other fees or mandatory payments levied by, or in the territory of, the Republic of Lithuania. **Grants from the Fund may not be used to compensate for indirect and direct taxes applicable in the Republic of Lithuania incurred by third parties when implementing Projects.**

This clause (a) shall not be interpreted so that any person who shall be remunerated for the provision of such equipment, materials, works and any services shall be exempt from income or corporate tax.

b) All consultants and other personnel financed **directly by the Bank** with resources from the Fund and assigned to assist in the implementation of the Projects shall be free from any and all taxes or any other fees or mandatory payments levied by, or in the territory of, the Republic of Lithuania.

This clause (b) shall not apply to any of such consultants or personnel who are permanent residents of Lithuania for tax purposes according to the respective laws of the Republic of Lithuania.

## Section 7. Indemnity for Nuclear Damage

### Section 7.1. Indemnity in Favour of the Bank

a) With the exception of claims for damage or injury against individuals arising from their premeditated actions or gross negligence, the Republic of Lithuania irrevocably guarantees that it shall keep the Bank, its employees, agents and subcontractors, both during and after the term of this Framework Agreement, fully and effectively indemnified and held harmless from and against any and all actions, claims, losses, liabilities, expenses or damages, whether in or outside of the Republic of Lithuania in connection with the implementation of the Projects or any relevant Grant Agreement to the extent such actions, claims, losses, liabilities, expenses or damages have arisen in connection with a nuclear incident at Ignalina NPP, including at the Project Facilities together with buildings, facilities or installations connected therewith or auxiliary thereto and located at the site of the Ignalina NPP.

b) The Republic of Lithuania hereby consents to submit to the jurisdiction of any court, whether in or outside of the Republic of Lithuania, in which any such claim or demand is made against the Bank and waives any defence or claim of lack of jurisdiction and any defence or claim of sovereign immunity in any action brought against it by the Bank in any court, whether in or outside of the Republic of Lithuania with respect to the provisions of paragraphs (a) of this Section 7.1.

## Section 7.2. Indemnity in Favour of Suppliers

The Republic of Lithuania may provide, upon request, the contractors, consultants and suppliers of goods, works or services financed through the Grant with adequate indemnities with respect to activities connected to the implementation of the Projects. Such indemnities shall be consistent with the generally accepted principles contained in indemnity agreements provided to such contractors, consultants and suppliers in similar projects and shall be provided on a non-discrimination basis. The Republic of Lithuania shall provide upon request a firm indication of its intention to provide an indemnity within 15 days from the date of receipt of such request. The Republic of Lithuania agrees to designate within three months from the date of this agreement a competent authority for the purpose of receiving indemnity requests and issuing such indemnities. The adequate model form of indemnity agreement will be prepared by the Republic of Lithuania and provided to the Bank as promptly as practicable, but in any event not later than three months after the date of this Framework Agreement.

## Section 8. Agency and Disclaimer

- a) The Bank is not an agent or trustee of, and shall not have any fiduciary relationship with, the Government of the Republic of Lithuania or any other person or entity.
- b) The Bank does not accept any responsibility whatsoever with regard to claims related to activities undertaken pursuant to or in connection with this Framework Agreement.
- c) The Republic of Lithuania acknowledges and agrees that:
  - i) the Bank acts solely in its capacity of administrator of funds for and on behalf of the Contributors to the Fund and that this activity is independent from its role as a financial institution supporting investment projects.
  - ii) any decision relating to the implementation of the Projects, the safe design, construction and operation of the Project Facilities and the operation, closure and decommissioning of Ignalina NPP will be made exclusively by the competent Lithuanian authorities and the entity designated as the operator of the Project Facilities.
  - iii) the entity designated as the operator of the Project Facilities and the Ignalina NPP shall bear exclusive liability in accordance with the provisions of the Vienna Convention and applicable law for any nuclear damage caused by the Project Facilities and the Ignalina NPP or in connection with the implementation of the Projects and its financing and that the Bank shall not be liable with regard to claims related to activities undertaken pursuant to or in connection with this Framework Agreement.

## Section 9. Notices

Any notice or request required or permitted to be given or made under this Framework Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it has been delivered by hand, mail, cable, telex or telefax to the party to this Framework Agreement to which it is required to be given or made, at the address specified below or at any other address as the party shall have specified in writing to the party giving the notice or making the request.

For the Republic of Lithuania:  
Ministry of Economy  
Attn. Eugenijus Gentvilas, Minister  
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LT-2600 Vilnius  
Lithuania

Telephone: (370) 2 622 416  
Telefax: (370) 2 623 974

For the Bank:

The European Bank for Reconstruction and Development  
Attn. Operations Administration Unit  
One Exchange Square  
London, EC2A 2JN

Telephone: (44) 20 7338 6000  
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#### Section 10. Settlement of Disputes

The parties hereto shall endeavour to settle amicably all disputes or differences between them arising out of this Framework Agreement or in connection therewith. If the dispute or difference cannot be amicably settled, it shall be submitted to arbitration by an arbitral tribunal (herein called the "Arbitral Tribunal") as hereinafter provided:

a) Arbitration proceedings shall be instituted by a notice given by the complainant party to the respondent party.

b) The Arbitral Tribunal shall consist of three arbitrators appointed as follows: one by the claimant party, a second by the respondent party and the third (herein called the "Umpire") by agreement of the two arbitrators. If within thirty (30) days after notice of the institution of arbitration proceedings the respondent party fails to appoint an arbitrator, such arbitrator shall be appointed by the President of the International Court of Justice upon the request of the party instituting the proceedings. If the two arbitrators fail to agree on the Umpire within sixty (60) days after the date of the appointment of the second arbitrator, such Umpire shall be appointed by the President of the International Court of Justice.

c) The Arbitral Tribunal shall convene at the time and place fixed by the Umpire. Thereafter, it shall determine where and when it shall sit. The Arbitral Tribunal shall determine all questions of procedure and questions relating to its competence.

d) All decisions of the Arbitral Tribunal shall be reached by majority vote. The award of the Tribunal, which may be rendered even if one party defaults, shall be final and binding on both parties to the arbitration proceedings.

e) Service of any notice of process in connection with any proceedings under this Section or in connection with any proceedings to enforce any award rendered pursuant to this Section shall be made in the manner provided in the relevant provisions of this Framework Agreement pertaining to notices required or permitted to be given or made hereunder.

f) The Arbitral Tribunal shall decide on the manner in which the cost of arbitration shall be borne by either or both parties to the dispute.

#### Section 11. Effective Date

This Framework Agreement shall become effective on the date upon which the Bank dispatches to the Government of the Republic of Lithuania notice of: (a) its acceptance of the documentary evidence furnished to the Bank confirming that this Framework Agreement has been duly authorised, executed and ratified on behalf of the Republic of Lithuania and constitutes a valid and legally binding international agreement of the Republic of Lithuania in accordance with its terms; and (b) due approval and authorisation of this Agreement by the Assembly of Contributors of the Fund.

#### Section 12. Termination

This Framework Agreement may be terminated at any time upon ninety (90) days notice by any party to it. The termination of this Framework Agreement shall be without prejudice to contractual commitments to suppliers under Grant Agreements which have entered into force prior to such termination.

DONE on 5 April 2001 in two (2) copies each in the English and Lithuanian languages.

In the event of any dispute or divergence of interpretation in relation to this Framework Agreement the English text shall prevail.

THE REPUBLIC OF LITHUANIA

EUROPEAN BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

By:  
Name: Eugenijus Gentvilas  
Title: Minister of Economy

By:  
Name: Joachim Jahnke  
Title: Vice President